ONTARIO COMMISSION ON THE LEGISLATURE

COMMISSIONERS

Dalton K. Camp (Chairman)
Douglas M. Fisher
Farquhar R. Oliver

EXECUTIVE SECRETARY

Robert J. Fleming

COMMISSION STAFF

Patricia Jackson
Katharine Miller

TABLE OF CONTENTS

THE LEGISLATURE OF ONTARIO AND ITS PHYSICAL ENVIRONS

There are grand, old-fashioned words like "fabric" and "clerestory" to apply to the structure and working facilities of the Legislature. Perhaps we can best put the subject as a problem in the form of questions. In considering the questions it is well to remember that at the time of its completion in 1892 the Legislative Building was large enough to serve not only the Legislature but all the Government departments.

Is the Legislative Chamber (and its associated space and facilities) a warm, attractive and effective work-place?

If the Members of the Legislature agree with us on the vital importance of what they do and the paramountcy of their institution in Ontario life, in perpetuity as we can conceive it, does the fabric match this importance?

Does the fabric have dignity and flexibility? Would most citizens, young or old, be impressed with it in terms of its majesty and intrinsic interest?

We believe the answers to these questions would be negative or hesitant.

We find the decor, the lighting, the facilities and their allotment to be old-fashioned, shabby in places and rather an anachronism. From the discomfort of the benches in the public galleries to the awkward lobbies to the most inadequate committee rooms to the cavernous foyers and halls to the hole-in-the wall offices of most MPPs, this is a fabric that is badly out of date. The culminative effect is both confusing and depressing.

Three specific matters brought us to an overall dolourous view of the Legislature's structure. These were -

- proposals to introduce televised proceedings, with all the requirements for high lighting, good acoustics and a fine sound system,

- the current, inadequate and uneven provision of space and services for members of the Legislative Press Gallery, and

- the manifest inadequacy of the rooms at present available in which MPPs, individually or in caucuses or in committees, and Ministers and party spokesmen, can meet representatives and delegations of groups and associations.

The next Legislature will have eight more MPPs. If our recommendations on the need for more representation are acted upon in the next few years, there will be need for even more provisions for Members inside and outside the Chamber. Whether or not such expansion follows our recommendations, both population growth and internal migrations in Ontario guarantee further redistribution and the near certainty of more seats in the next decade. Other recommendations of ours have been acted upon (and are likely to be extended) regarding more research staff, more staff for House leaders, the Clerk's Office, the Speaker and the Legislative Library.

Clearly then, something significant and major must be done to appraise the Legislative Building as a whole, and to consider restructuring or rebuilding it. Along with any such endeavour must go some massive reassignments of space and facilities.

We would expect two primary objections from those who will think our description is too critical and our prescription too grandiose. The first objection will be about the costs. These will be considerable. The second objection will centre on the intrinsic merit of the present

fabric with an appreciation of how historical it is, how hallowed by time.

On the first objection let us only make two comparisons. The costs of converting the Legislative Chamber and the whole building into a facility which is effective, attractive and flexible for present and future use, should not come near the spending the Ontario Government has put into Ontario Place. It should fall far short of what moneys have gone into the creation of the magnificent headquarters building of one of the Province's most important agencies, Ontario Hydro. Such comparisons do not justify wasteful expenditures. They are not used with any invidious intent.

We recommend a major alteration in Queen's Park on the basis of obvious need, not for display, although to us the display of an attractive, functional legislature has a high priority. We believe it should be of like interest to the Members and the public.

The second objection, about the desecration of an historical value, can be met with good design, layout and furbishings. The Chamber itself has the dimensions to accommodate real changes in lighting and seating. There should be provision for the creation of more privacy on the floor of the Chamber itself without any contradiction to the original lines and structure. As for the offices in the building, the hallways, the foyer, the staircases, the exhibits and the Edwardian style of portraiture (which needs cleaning) - their combined effect is dour. A few offices are majestic. Some of the woodwork is valuable and fascinating. But much of the woodwork, the wall texture, lighting, floor surfaces and furnishing is gloomy and, in places, shabby. There is nothing hallowed about a building for which the passage of time has drastically altered the usage and the needs of its users.

Under the subject headings of the Legislative Press Gallery, and Television and Radio, we deal more specifically with some recommended changes in the fabric.

A distinction we would press upon the planning for changes and for reallocation of space is that no ministerial administration beyond that necessary to the Premier's operations should be based in the old Queen's Park Building. Each Minister as a Member of the Legislature, in exercising his responsibilities, must have a modicum of an office in the Legislature Building, but essentially all but the Premier should largely function as Minister in their own departmental locations.

While the current provisions for ordinary Members in office space are marked improvements in space and comfort to what existed less than a decade ago, we are not impressed by the quality of it. Most of the rooms are too small and too crowded; they lack privacy. In effect, for most MPPs and their staffs these are cheerless cubbyholes. While the plans for renovation must include flexibility for future growth in the number of Members and their staffs, there is an excellent case for more roominess and privacy for the current membership.

If one took a crude rule of thumb that every Member merited a separate, full private office, with a modest floor space of 160 square feet, plus an outer area of 120 square feet for his secretary and also to serve as a minor reception space, one gets a space requirement per Member of 280 square feet. Multiply this by 125 (Members) and the total required (without being at all extravagant) is 35,000 square feet. Of course, there are other basic space needs - more roominess for Ministers and party leaders, good provisions for legislative committee rooms and caucus rooms. An appraisal of current and long-range requirements should be done as soon as possible by a team, including an architect, an engineer, and someone from the Speaker's staff.

One can make a distinction between those who work in Queen's Park, including the staffs of Members, caucuses and the Legislature, and three other groups of people with needs to be met. There are those who come on occasion, sometimes singly, sometimes in very large groups, to meet specific Members or groups of Members. There are those, especially

children, who come to observe the sittings of the Legislature. There are those visitors who come in as tourists or with a general interest, merely wishing to see the heart-place of Ontario politics and legislation. All three types of visitation are poorly served by the fabric of the building. There is more grandeur, and just about as much discomfort, in the Union Station in Toronto as there is at Queen's Park for citizens.

We believe it may be impossible to convert Queen's Park into anything as architecturally imaginative as Toronto or Hamilton City Halls. Certainly, there is little likelihood that the Legislature as a physical entity can ever be altered into something as symbolic and cherished as the main Parliament Building at Ottawa. The limitations of the frame and design of Queen's Park are all too obvious. But with a will, and with funds and the talent which is available, we can get an institution that, in a physical sense, is both attractive and useful.

Implicit in our view of the Ontario Legislature is belief in the importance of the institution and in Ontario government as a whole. Aside from matters of size and growth, the Province is as important a jurisdictional and legislative entity as any other affecting the citizens of Ontario, including the Parliament and the Government of Canada. The Legislature must be seen as important, and considered as vital and of interest to the public. One means of ensuring and enhancing its worth is through an impressive, attractive, and useful building in the fullest sense of what a fine building can be or can convey. Much needs to be done to achieve such a goal.

The Commission's members reiterate in this report, as in the First and Second Reports, their strong unanimous belief that the Speaker should have the ultimate authority for the Legislative Building, the direction of its care and up-keep, and the allocation of its space. We believe the priorities in allocation of space begin with the Members' (including Ministers') working sessional offices, the Premier's office

including his basis of operations and Cabinet meeting facilities, the Speaker and Clerk, and a Press Gallery "Hot Room". Next in priority should be committee rooms and other meeting rooms for caucuses, groups and lobbies; then the Legislative Library and offices for members of the Press Gallery, followed by provincial secretariats, and finally the Lieutenant Governor.

TELEVISION AND RADIO COVERAGE

of the

ONTARIO LEGISLATURE

The Members of the Ontario Legislature, prompted we are sure by the initiative of the Premier and his Ministry, will determine whether there shall be television and radio access and coverage of the proceedings of the Legislature and its committees. We not only recommend such access and some plans for how it should be done, we believe it should be done with dispatch after the simple affirmation of the Assembly to a general resolution.

Throughout the western world there has been a remarkable hesitation on the part of elective assemblies, particularly those in the British tradition, to give access to their proceedings for the purposes of television and radio broadcasting. The Ontario Legislature has been as cautious as most others in this matter. Thus we are in the position of appraising the merits of such access, and all the associated problems and issues, without a substantial body of considered opinion by the legislators and in a geographical entity with a well-developed and complex system of television and radio broadcasting already in place. That is, in most of Ontario citizens have an established variety of choices in channels and frequencies and programs. Simply because there has been so little informed public discussion about the subject and so little experimentation, we have had to look perhaps too much at examples in other provinces and other countries, and we have had to elaborate on the distribution systems and the news-gathering and dissemination systems as they now function.

It is fortunate that the British Columbia Legislature has had produced an excellent report by Edward McWhinney, Q.C., a well-known legal authority, on the subject: "Parliamentary Privilege and the Publication

and Radio and Television Broadcasting of Parliamentary Debates". This report was submitted to the Hon. Gordon Dowding, MLA, Speaker of the Legislative Assembly of British Columbia, on December 10, 1974. We print this report as an appendix to our report. It happens that the gist of Dr. McWhinney's observations and recommendations - on the two-fold matter of privilege for the legislators and protection for individuals and groups in the general public from extreme and offensive utterances in the Legislature - coincides with our views, and his report has the advantage of a careful review of precedents in what might be called the law of parliamentary privilege and the position of those who publish or broadcast parliamentary proceedings with regard to libel and slander actions.

We leave our brief analysis of the above-mentioned matters until the end of our report, other than to state that we do not see major difficulties with regard to either privilege or libel and slander concerns as factors which should inhibit the giving of access to the Ontario Legislature to sound and television broadcasters. As a convenience in discussing the subject, we define three practical aspects: ACCESS; SOUND AND PICTURE RECORD; and DISTRIBUTION.

By ACCESS we mean the right and the rules which should or could apply to letting the recorder, the camera, the electronic personnel, and the reporters for radio and television, into the Legislature with the authority to cover the institution's proceedings.

By the SOUND AND PICTURE RECORD we mean simply the taking by camera and sound track of an electronic Hansard of the proceedings of the Legislature and its committees.

By DISTRIBUTION we mean the systems and methods by which this picture and sound record may come to the citizens of Ontario through the existing, developing, or possible ways in which they receive their radio and television programming.

Frankly, the distribution system as it exists, or seems likely to develop, puts practical limitations upon any plan to bring extensive programming of proceedings of the Ontario Legislature to the public. To be more explicit, it is beyond our envisaging that anything close to full coverage of the proceedings of the Legislature will ever go into the homes of most Ontario people in a sustained way on either an actuality or a delayed basis. This seems absolutely certain for television. It might be possible, after the fashion of legislative coverage in Australia or Saskatchewan, that extensive radio broadcasting of the proceedings as they take place will be established, since it would be technically feasible and not too costly.

We believe it is impossible to introduce a separate and new distribution system to deliver the proceedings of the Legislature by telecast signals to most of the homes in the Province. That is, the legislators must fit any proposals for coverage of their activities into the distribution system which already exists or which is planned as a development already - e.g. more cable systems and the Ontario Educational Communications Authority provincial network.

Almost all general discussion about the subject of bringing the Legislature to the people has really had television in mind, not radio. Radio is much cheaper to introduce as a technique into the Legislature and, comparatively, it is "dirt cheap" to arrange for distribution of the actuality radio broadcasts across the Province. The fact remains that the interest and the demand, among both legislators and the public, is really for television, not radio.

It is clear to us that the state of television technique is so advanced that there is no insuperable barrier, in either costs or inconveniences, to televising every hour of the Legislature's proceedings. It is easy enough to improve the physical facilities of the Legislature in terms of lighting, air conditioning, camera position, control room

and editing facilities, to record a good picture image of activities, and to put it on good quality colour videotape. We think the capital investment in the essential TV equipment would be around $2 million. The annual operating expenses for taking and recording the image-sound track could be handled at present costs for equipment, materials and labour for about $800,000 a year. The financial rub comes in two other areas:

Firstly, we think the Assembly and its environs need substantial restructuring and refurbishing. This is only partially required by the lighting provisions and the space requirements of cameras and staff. Both the galleries and the seating arrangements for Members and others on the floor of the Legislature need modernizing for comfort, better audibility, and a brighter, friendlier atmosphere. Such changes should be made in conjunction with plans for three camera positions and a good, unobtrusive control room with excellent vision on the whole Chamber. Given the adversary arrangement of the Legislature and the important role of the Speaker, it seems obvious that three camera positions at a minimum are required: one to cover the Speaker directly and to give a variance in shots of other Members; and one each to have direct, 180-degree coverage of each side of the Assembly.

One long-held assumption behind the traditional assignment of a desk to each Member of the Legislature is that this gives him a work-space for correspondence and reading during debates. The desks take up a lot of space and only on rare occasions during debate are the majority filled. Certainly, the development of secretarial staff for MPPs, and the multiplication of correspondence and research and intensive use of the telephone between MPP, constituents and officials, has meant that most MPPs have to do much of their work in their offices rather than in the Legislature itself in relation to constituency chores. We suggest that the occasion of restructuring and refurbishing the fabric of the Assembly to accommodate television, and to make the institution more attractive and comfortable as befits the Province and the scale of its government and

politics of today, should be seized to consider abolishing most of the desks from the floor of the Legislature, and moving towards the British pattern of comfortable benches and a more intimate debating and discussion atmosphere.

An immediate disadvantage will be seen by some to this proposal to clear most of the desks. The desk identifies the place of the Member in the seating plan that people in the galleries are given. If he or she (the Member) has no fixed place, how will those in the galleries know whether he is there? We point out that this identity is a dubious advantage, given both the paucity of public attendance on most occasions and the often sparse attendance (for good reasons) of Members in the Legislature. As for the argument that the desk enables the Member to work on speeches or correspondence or the study of research materials while attending but not taking part in the debate, we distinguish that "most" - not all - the desks should be taken out. We recommend that they be left for the front row and the back rows, the first for the use of Ministers and Opposition leaders with much material, the back for that fraction of Members in attendance who want to read or write.

For television, of course, the system must include "punch-up" graphics identifying each Member and his riding. It would not take long after the advent of television before the production crew would be able to identify on the screen each and all those upon whom the camera was focussed. Of course, we envisage constantly adjusted graphics for the picture, which would show the time and date and the period in the proceedings, or the stage of consideration and the item being considered.

Elsewhere in other reports we have made the point that the Legislature should plan its future arrangements and accommodations with perpetuity in mind. We cannot foresee the day when there will not be an Ontario Legislature. We reiterate that government in Ontario has become so large and complex that much more concern must be given to enhancing the activities of the Legislature and the interest of the electors in

its doings. There is no magic, no virtue, in clinging to an archaic fabric and ignoring the benefits that modern materials and equipment can provide legislatures. We have seen a half-dozen assemblies in Europe and in the United States which, on every count of comfort and efficiency for legislator and citizen, make the Ontario Legislative Assembly seem an anachronism from the Victorian era. The changes which we think should be planned and carried out would be more costly than merely the $2 million to equip the present Assembly to record the proceedings in a kind of electronic Hansard. But, in a time of $7 million high schools and $50 million government buildings in Ontario, we think the expenditure of substantial funds to improve the Legislature and its environs is timely and necessary.

But the second and more specific "rub" in terms of cost relates directly to the problem of delivering the sound and image record of proceedings to the homes of Ontario people. To guarantee that any substantial portion of the record is to be a component of the "aired" television programming to be made available on a daily basis throughout the Province, would demand either the literally fantastic cost of a completely new distribution system or the twisting and near-wrecking of most of the television program schedules now extant. We will come back to this point shortly.

Although it is understandable, it is hard to justify the situation that has developed in the political coverage in Ontario which allows reporters for the print medium complete access to the sittings of the Legislature, and the almost complete right to use in such medium anything said or done by the legislators, while the media which reach more of the citizens than the print medium do not have access. Radio is essentially a sound record; TV is essentially a picture and sound record. Most citizens today, and for the past fifteen years, seem to have their primary impression of government and politics from television and radio programs, especially from television. News programs are available to most citizens through TV channels and radio station frequencies. Yet only on very rare

occasions such as the odd Budget presentation or Speech from the Throne are citizens given the chance to see and hear their legislators in action in their place.

The most reasonable explanation for this imbalance in favour of the print medium (and the reporter employed by daily newspapers and news agencies) is simply the fear or apprehension which television has created among politicians that it would give them unfair exposure and alter in an unsavoury way the behaviour of some of them. It has been as though there would be something dangerous and unfair about television reportage of the legislatures, taken within the legislatures. One unfortunate consequence of the practices which have developed into custom because of this fear is that the legislator comes out of his place in the House to appear before the camera, usually in a daily succession of brief "stand up" partisan performances. While this practice has given the legislators a form of television exposure and some control over how they are seen and what they are seen to be saying, it is quite unnatural, particularly when compared with the reports in the print medium of what was said in the Legislature and the interpretations that the print reporter makes of such legislative performance. Furthermore, the practice distorts out of all proportion the vitality, worth and balance of the performance and the matters handled in the Legislature. It tends to make "outside" statements more important than "inside" statements. The real stuff of a parliament is conveyed by the personalities in the proceedings, not by single, separate faces speaking into a camera or replying in side or three-quarter view to the questions of some reporter.

We have spoken with representatives of most of the television and radio organizations in Ontario. It is important to remember that the allocation of TV channels and radio frequencies and, to this stage, the licensing of cable delivery systems is done under the authority of a federal agency. It is also important to remember that there are not any television or radio networks "per se" which are organized on the basis of coverage, in whole, of Ontario.

The CBC as a national organization in both radio and television (with separate organizational structures for French and English) has what it calls an Ontario network, but this really functions as an aspect of the national network or networks. In radio the CBC can reach most Ontario listeners, notably through many low-power relay transmitters in Northern Ontario, but most programming is national. In television the CBC can reach most Ontario viewers through its own stations and through affiliates, but in the main its regional programming or scheduling for Ontario is something that takes a backseat to national priorities. While we are sure that the CBC would look responsibly at opportunities to bring some coverage of the Ontario Legislature to Ontario viewers and listeners if it had access to the Legislature or to an electronic Hansard, we cannot conceive that it could clear regular blocks of time five days a week for 30 weeks in the year to provide an actuality telecast or broadcast of substantial periods of the proceedings, not even on a delayed broadcast basis.

The CTV network serves a national layout of television stations and it has a number of Ontario affiliates reaching much of the population, though not as much as does the CBC and its affiliates. The CTV network is not geared to serving only its Ontario affiliates, except on very special occasions. Further, the apparent commercial revenue needs of CTV's affiliated stations are such that any substantial daily coverage of the Legislature (say, over a half-hour) on a regular basis is precluded.

Global TV is at present a network which serves southern Ontario, and in this sense it is truly confined to the Province. But it has far from a complete, wide-reaching Ontario penetration, and the overall plans which both the network and the CRTC seem to have for Global are national, rather than for one province.

OECA, an authority created by the Ontario Legislature, has a mandate for educational and public service telecasting in this Province alone, but it is some years and much spending away from being in a position to put its programs into the homes of most Ontario viewers. There are a few independent television stations in Ontario, such as Channel 11 in Hamilton and Channel 79 in Toronto.

In much of southern Ontario, and in places in the rest of Ontario close to the United States, it is possible for viewers to get American TV channels through a good antenna. In addition, there has been the exceptional development of cable systems in Ontario. The CRTC has awarded franchises on a local, not on a provincial-wide, basis. The profusion is well illustrated by Toronto which has half-a-dozen different franchise owners, splitting up Metro into segments for cable service. The CRTC requires cable system franchise-holders to give priority to Canadian channels and to keep at least one, and preferably two, of the cable channels for community telecasting. That is, where cable systems exist in Ontario - and it is doubtful whether they will cover as much as 85% of the Province's population by 2,000 AD - there is seemingly an outlet for distribution of the televised proceedings of the Legislature.

Unfortunately, aside from the profusion of franchise holders, there is also a profusion of varying technical arrangements and standards of image and sound. What is more relevant for our purposes is the reality that such cable channels with cable-designed programs have drawn small, indeed minimal, audiences, simply because of the greater attraction of programs and the technical qualities of what can be seen and heard on regular channels. Cable systems would seem to provide a partial distribution system in Ontario for substantial showings of the proceedings of the Legislature through their community channels, but they obviously do not deliver a substantial viewership nor do they at this stage in their development provide a broad, coherent and technically excellent penetration to most citizens of Ontario. Until there is a major consolidation

of systems - and this seems to be against the grain of CRTC policy on cable - nothing like a cable distribution system of an on-going kind is possible in Ontario.

We commend to the legislators of Ontario a view of the present television system of distribution in Ontario that emphasizes its variety. A great deal is already in place. Most of the people in the heavily populated part of the Province have the choice of many channels; viewing patterns and trends are already set, so are program practices and scheduling. If in a typical legislative year the total hours of sitting run from 800 to 1,000, how much of this, as televised and recorded for actuality and/or delayed showing, could be expected to be carried by the present distribution system? The answer is very, very little. Further, the only part of the distribution system which is directly under the authority and therefore the direction of the Legislature, is OECA; and it is far from having a provincial-wide distribution system for showing substantial hours of the proceedings.

We may seem to be over-emphasizing the distribution system as it exists and is developing, but this is necessary because we have found that many politicians seem to feel the major problem and major cost lie in giving access to television and, once that is arranged, then long and regular segments of their activities in the Legislature will be seen on home television sets in Ontario. Not only will this not happen through the present distribution system, to create another new system to reach most viewers would have astronomical costs and, we are afraid, small audiences. Consideration on this subject, we believe, should centre on how television and radio reportage of the legislators can best be planned to be used by the present system of distribution.

The situation in Ontario radio is quite different from television, except that most listeners have an even wider range of station choices. There is really nothing in radio that looks like an Ontario network. It is apparent that most private radio stations in Ontario concentrate on

serving local markets, both in terms of commercial messages and in the content of their programs. Further, they make most of their revenues and reach most of their audiences in the daytime hours, particularly between 7:00 a.m. and 6:00 p.m. It would be relatively cheap to create a provincial-wide network of repeater, low-power transmitters which could bring a complete coverage, as proceedings take place in the Legislature, to most of the radio sets in the Province. To what purpose?

Why hasn't OECA gone into radio? After all, it is much cheaper than television. One can foresee only a tiny audience for such legislative programming by radio because of the competition from existing stations and their popular programming built around music and disc jockey personalities, "open-line" shows and short, punchy news broadcasts every hour. Even though it is technically practical and comparatively cheap, we cannot recommend the creation of a special network for the single function of conveying the Legislature's proceedings. It is our judgment that the potential audience would be huge and the actual audience near zero, a "ghetto" within a "ghetto".

It did become clear to us in discussions with both MPPs and with radio broadcasters that a fair generalization can be made that politicians and political parties are more satisfied with, and less critical of, radio treatment of themselves and public affairs generally than they are with either the press or television. Special credit was usually given to the alacrity with which radio covers local matters that hinge on provincial politics. Clearly, the MPPs believe that the present system of radio news and public affairs broadcasting provided by both private stations and the CBC is usually fair, worthwhile, and to be commended. However, not a single MPP suggested any sustained actuality radio broadcasts of the Legislature, and none of the broadcasters showed any interest in making such broadcasts a major, sustaining component of their programming. What the radio broadcasters would like, and here they square with the television broadcasters, is access to and use of the sound record of the Legislature. They want the same privilege as the print reporter of the

daily paper has. They can see no reason in principle, or in inherent traditions, why a sound or televised excerpt from the Legislature's proceedings should be considered different in nature and in usage from a printed quotation.

Here we may say something useful about the news coverage of the Legislature, and about provincial affairs generally. Much of the news that comes to readers, listeners, and viewers is gathered and written, or made and distributed, by co-operative news agencies - both public and private. We think of Canadian Press and Broadcast News, NEWSRADIO and Contemporary News. These organizations are well established with national, provincial and regional sources or contacts. They have been covering Queen's Park (i.e. both the Government and the Legislature) for many years.

In addition, the major metropolitan newspapers have bureaus at Queen's Park, so do several of the chains. There are even several columnists who write on provincial affairs. CBC radio and television, CTV and its affiliate CFTO, and several private stations keep either a staff at Queen's Park or have personnel available for quick coverage there. Without quantifying it by year, there has been a fairly steady growth in numbers of reporters for provincial affairs in radio, TV, and the daily press. We have some forty full-time members of the legislative Press Gallery at this time. By "full-time" we mean that the staffing is on a full-year basis. "Associate" members, whose numbers vary, are occasional or part-time assignees to coverage of provincial affairs at Queen's Park. The growth in numbers should continue, though not spectacularly.

Again, we have not carried out comparative surveys but it seems very clear that there has been an increasing appetite for news of provincial political affairs among the public, and a growing willingness on the part of publishers and managers of the media to serve this appetite. For two obvious reasons we think this trend will continue: firstly, the provinces, within the Canadian political framework, have

recently grown proportionately more than the Federal Government in terms of significant impression on citizens and, vis-à-vis local government, the trend to regional government and to broader provincial policies has helped shift more attention and responsibilities onto the Province; secondly, the emerging issues of the urban future, the environment, and multi-purpose land, resource, and recreational needs are not only largely provincial, they are activating vociferous pressure-group and "one-interest"-lobby representations. Therefore, the implications of growth and other trends in news and public affairs coverage of provincial affairs, and thus of the Legislature, are positive and should be planned for on more than an "ad hoc" basis or from one parliament to another.

The utility of having available to the media and the public material from an electronic Hansard for news and public affairs programs, is apparent within the context of the trends mentioned in the previous paragraph. Out of access for the sound recorders and videocameras will flow much more useful material than is available at present to these techniques and their users, and ultimate consumers, in their peripheral relationship to the Legislature.

All the radio and television executives to whom we spoke, or who made representations to us, including those from OECA, made it clear and final that they wanted access to the Legislature to carry out their roles in news and public affairs, but they would not and could not make any commitment to extensive and uninterrupted or unedited coverage and distribution of the proceedings, even on a delayed basis. The cable operators had a somewhat different position. But all those to whom we spoke wanted absolute editorial freedom to take what they want, and to broadcast or telecast what they wish of the proceedings. They do not want to be limited in any way that distinguishes them from print reporters and the print medium. If they decide to use a 60-second clip from the daily question period, they want no strictures on what they choose or where the clip begins and ends. If they decide they want a long piece of an important debate they want the freedom to take it or leave

it or snip it. They also want it understood that they have the right to edit such sound and picture record as they think right to fit their judgment of its worth, and the exigencies of the program time they have available. None of the presentations asked for the protection of "qualified privilege" which has developed in the British and Canadian common law, with regard to freedom from actions for libel or slander which might be brought by citizens over statements made by MPPs in the Legislature, and shown or reproduced in sound or sound-picture image outside the Legislature.

To reiterate, we are convinced it is past time when the Ontario Legislature should have given such access to radio and television. To the legislators who worry about unfair editing or selections we can only point out that the Ontario Legislature, since its beginning, has given the same privilege of access and editorial judgment to reporters, editors, and publishers of newspapers. The protection that the legislators have had over the years with regard to press treatment has been the well-enshrined one of privilege. That is, the Legislature, assembled and through its Speaker, has the right - and it is an ultimate right - to call before it any journalist or publisher who transgresses its understanding of privileges. Over on the other side with the radio and television broadcasters we must remember there is a discipline exerted by both the public sense of fairness and by the rights of any citizen, whether legislator or not, to sue for libel or slander.

A VIEW ON THE MATTERS OF PRIVILEGE, LIBEL AND SLANDER

The report of Dr. Edward McWhinney, Q.C. to the Speaker of the Legislative Assembly of British Columbia is particularly useful to us because the parliamentary and constitutional issues raised by television in the two provinces are so similar.

Dr. McWhinney expresses an opinion which is worth quoting, especially because it led him to make recommendations to the British Columbia

Legislature which should be considered by Ontario Members. After canvassing the law in Britain and Canada with regard to the privileged nature of statements made in legislatures by Members, and the extension of the privilege to the reproduction of these remarks in printed form, McWhinney states:

> "As the law now stands, the balance between, on the one hand, the interests of Members of the Legislature in carrying out their legislative functions without fear or favor, and on the other hand, the interests of private citizens or groups in not being slandered or libelled in the legislative debates and the published reports of those legislative debates, without effective means of political or legal redress, seems tilted rather heavily in favor of the interests of the Members of the Legislature. This particular imbalance appears bound to be accentuated with the transition from direct, written (printed) dissemination of the legislative debates to direct oral (radio) and direct oral-visual (television) dissemination, granted the immensely greater range and immediacy and also the unusual intimacy and impact of these newer communication media. Corrective or compensatory community action designed to afford a correspondingly wider and more effective range of remedies for persons seeking redress from the vastly augmented dissemination of legislative debates afforded by direct radio and television diffusion, seems needed, and this whether such aggrieved persons be themselves Members of the Legislature or simply private citizens."

Dr. McWhinney argues well that "it does not ... seem either useful or desirable to essay the development of dramatic new rules as to privilege in publication in the interstices of a highly specific and spatially limited problem-situation - namely, the publication of Parliamentary debates."

Rather than an extension of powers and rights of the Legislature regarding privilege, McWhinney advocates a greater reliance on public education and example. He says,

> "Perhaps the Legislature could create a special, All-Party committee having jurisdiction to examine questions of legislative privilege in regard to publication or dissemination of legislative debates."

Such a committee could handle references to it of all cases of alleged breach or misuse of Parliamentary privilege as it applies to alleged slander or libel. Such a means and method would not rule out individual court actions alleging libel or slander. It might provide a quicker, cheaper and better publicized means of redress and judgment. Such a committee requires considerable discussion and certainly some determination of its rules, before it is created by the Legislature.

McWhinney thinks that until provincial legislation defines and extends the scope of privilege as to publication of debates by radio or television, the broadcaster "...acts at his own peril; and he could be very well advised, in particular, to limit himself to contemporaneous broadcasting, without any editing or deletions or extraneous commentary interpolated into the broadcasts themselves."

His warning about the risks is fair. What concerns us is that some, including Members, may take his advice as some kind of sanction which postulates unedited use of electronically-recorded debates and stands against excerpts taken and presented with interpretation or commentary.

Just as a generality (and this applies in Britain, Canada and the U.S.), despite the awesome penetration of television and radio in terms of audiences and viewers and in terms of hearing and the showing of thousands of public figures making controversial statements which have

been highly-edited and interpreted, the number of libel and slander actions entered in the courts has been small, certainly much less than those entered over statements appearing in print since the advent of radio and then television in the three countries.

But we like Dr. McWhinney's proposal that after due examination the Legislature should adopt a comprehensive statute which spells out the origin, precedents, bases, limits, and a legislative review and examination process regarding privilege for all publications of what transpires in the Legislature.

We recommend that the Legislative Committee on Procedure always be ready to hear grievances brought by petition to the Legislature by anyone who believes he or she has been libelled or slandered by broadcast statements from the proceedings of the Legislature.

The need for a clear separation of electronic coverage of the Legislature from the Government, the factors of concern for matters of privilege, libel and slander, plus the traditional role the Speaker plays as neutral symbol and protector of legislative rights, are all reasons why we recommend that the Speaker have the ultimate responsibility regarding the introduction and management of television and radio as it develops in the Ontario Legislature.

We recommend that the Ontario Educational Communications Authority be asked to install the actual recording and camera equipment, and operate the recording and video-taping under an annual contract with the Speaker.

THE LEGISLATIVE PRESS GALLERY

The members of this Commission have met with members of the Legislative Press Gallery, formally and informally, on a number of occasions. The Gallery has submitted briefs to us which we have discussed with its executive and which make clear its perception of its role and place at Queen's Park.

The Legislative Press Gallery is a unique institution. Its membership presently consists of 36 active and 15 associate members representing the entire spectrum of the media profession. The Gallery has the right to accept or reject applicants for membership. Only members of the Gallery are entitled to space in the Legislature and they alone are allowed to take notes of the proceedings - a right, incidentally, which they suggest be extended to the general public in the public galleries. (Elsewhere in this report, we concur in part.)

Members of the Gallery are granted office space and other work areas which they apportion among themselves. They have also the right to discipline their own members even to the extent of suspension of membership.

For some time, the Gallery enjoyed its own bar which was within the Legislature confines and without license, and to which Government turned a blind eye. The bar was staffed by Government employees. Proceeds from the bar reverted to the Press Gallery. The arrangements with respect to this operation have been changed by the Office of the Legislative Assembly, in consultation with the Gallery members.

The Legislative Press Gallery is understandably jealous of its prerogatives, and concerned about certain aspects of its present environment which create difficult working conditions.

It is reluctant to have any of its operations come under the jurisdiction of the Government, preferring that these be inclusive and exclusively within the Speaker's jurisdiction. Even so, as its brief mentions, it is reluctant to submit itself entirely to "the whim of the Speaker" since, in its experience, all Speakers do not rule alike.

It is true that the Gallery lives a somewhat haphazard and perhaps insecure life; it has on occasion been threatened with eviction from some of its space; rules governing its activities have been variously interpreted by various Speakers; its physical existence within the legislative building is by consent rather than by right; the Press Gallery and the legislators live together by common law and not by Statute.

Because this is so, the members of the Gallery have asked the Commission to consider "if ... recognition is possible under the Legislative Assembly Act." Such recognition would:

- forbid the Legislature from holding closed sessions which, in effect, bar the press and public - a right the Legislature now has but has never exercised;

- forbid, as well, committees of the Legislature from excluding the press - a right the committees have exercised;

- confirm the right of the press "to be present and to report by all practical means" (presumably to include electronic recording)"all legislative activity ... free access, not dependent on 'the whim' of the Speaker, along four sides of the Chamber, members' lobbies, and all areas surrounding the Chamber ...";

- give unconditional right to publish all information, however obtained, privileged or otherwise;

- charge the Committee on Procedure with the responsibility of protecting these rights.

The Gallery brief makes clear it wants its own constitution recognized by the Legislature, as it also wants the confines of its present physical environment guaranteed and made inviolate. In support of this the brief states:

> "We feel it is important to the gallery that we maintain our present facilities but again, may we remind you that we have no guarantee of the use of these facilities. We suggest that your commission, therefore, study the possibility of recognizing and acknowledging in statute the right of the press in an open democratic parliamentary system to report fully on the Legislature and its emanations."

The Commission does not want to seem argumentative when confronted by an inarguable truth - which is that, indeed, the right of the media to free access to the Legislature is fundamental to a democratic parliamentary system. Still, the argument that free access to the Legislature is synonymous with the statutory guarantee of working space and facilities within the Legislature seems something of a non-sequitur.

In the Mother of Parliaments at Westminster, no such corollary right as office space within Parliament exists. In Ottawa, the private offices of the working press are now a brisk walk removed from the Parliament building. Indeed, the Ontario Legislature is one of few in which the entire membership of the working press is housed in the same building with the legislators.

"The members of the press," states the Gallery brief, "should have as much right to their seats in the press gallery as the members of the Legislature have to their seats on the floor of the House."

On first reading, it is a startling statement. But it is also true;

in short, in our system of government, the 36 active members of the Legislative Press Gallery of Ontario - who have elected themselves - have as much right to their seats in the Press Gallery as do the Members of the Legislature, who have been elected by the people of Ontario to their seats on the floor.

"We are not just the vital link between the Legislature and the public," argues the brief, "we are the public and as such must have full and free access by all practical means to carry out our duty and responsibility."

Clear enough, and perhaps fair enough. But the Gallery members have considerably greater access, freer and fuller access, to the Legislature than does the general public. Even so, such access is not absolute in its freedom, nor infinite in its fullness. There are limits.

Ministerial and Members' offices are accessible only by permission, as are the caucus rooms, the cabinet, and other ministerial gatherings. The democratic system cannot function without an appropriate element of confidentiality and even secrecy. Which is why, in our logic, we have argued that the Legislature of Ontario and its physical confines are best made the domain of Mr. Speaker who represents the singularly sovereign will and authority of the people's parliament. The essential relationship for the Press Gallery, as an association with responsibilities and needs, is surely with the Speaker.

That is not to say, of course, that the media are not free to divulge that which is deemed to be secret or to penetrate confidentiality. As a generality, the media have as much responsibility to do so as does the Cabinet or caucus member have responsibility to frustrate the attempt.

What must be determined is a suitable working definition of "access". We take as given the right - and the public interest that requires such a right - of the Legislative Gallery to admit its own members, discipline

their conduct, be seated in the Press Gallery, move freely in the legislative environs, attend open meetings of legislative committees, be provided promptly with free copies of all Government releases, be provided adequate common work areas, with requisite ancillary services and facilities, and that none of this ought to be subject either to the "whim" of Mr. Speaker or to ministerial caprice.

Beyond that, however, it seems to us that there are also rights to be held by the legislator and upheld by the Speaker. The legislator ought to be free to conduct the public business in an atmosphere conducive to the parliamentary process, which suggests an atmosphere in which decorum and order are dominant, where the legislator may speak and others may hear, free of external distraction, interruption, or harassment.

The legislator must have prior claim to the physical property of the Legislature, wherein he must function and which is both his forum and his office. The comfort and convenience of the legislator represent a prior concern, if not the first concern.

Appropriately, then, the Members of the Legislature make their own rules or change and amend them. In that realm, they are sovereign, just as they ought to be, in our view, in their own domain of the legislative building.

In our earlier recommendations, we made it clear that if the Legislature is to work for the Members of it, then the Members, through their Speaker, must have the ultimate authority over their domain and, in consequence, over all others who have their business there, or who enter the premises for whatever reason.

The legislative building itself is limited in its capacity to serve the purposes and functions of modern government. Plainly, its builders did not foresee either the size of the present parliament in members, nor the growth of the Ministry, nor the proliferation of legislative committees and delegations. Nor could they have contemplated the present

space required by the media, much less that to be contemplated if television and radio systems are to be introduced.

Furthermore, the legislative demands for space within the building seem certain to grow and, since the space available is finite, someone or something has to go.

In earlier reports the Commission, recognizing the problem, proposed that the space now given over to the Lieutenant Governor be returned to the Legislature and other accommodation found for that office. We also proposed that the three policy field secretariats be accommodated elsewhere, while continuing to allow space for Ministers with departmental responsibility.

This is all by way of emphasizing the conflict, if not the contradiction which exists in our minds between the right of the media to free access to the Legislature and the desirability of accommodating Gallery members within the legislative building. It should be said here that much of the space now occupied by the Gallery would be unsuitable for others less accustomed to rigor and discomfort than the working press. As maintained at present, little of it is prime space and substantial structural alterations would have to be made before it could suitably house anyone else.

But still, it does not seem provident to us that the Legislature confer any space on the Press Gallery in perpetuity when it is inevitable that the time will come when either the space will not accommodate the Gallery membership, or the legislators themselves will have need of it, or both. The only practical recommendation we can make, in this regard, is that members of the Gallery continue to be housed in their present space and none of it be taken from them until such time as the Speaker will decide that all of it must be taken from them.

At such a time, which is in our judgment inevitable but distant, more spacious, comfortable and efficient premises could be found for

the Gallery adjacent to the Legislature - as has been done in Ottawa - while at the same time maintaining certain minimal and common facilities for the working press within the legislative building (although we suggest elsewhere that they and other non-members be precluded from being on the floor of the Chamber).

We would recommend to Mr. Speaker that the present premises be examined with a view to making them more comfortable in the interim. The room now used for news conferences is inadequate and needlessly so. As to the question where the Gallery members are free to go, in relation to the Chamber itself, the Commission feels such a question should be left to Mr. Speaker and the members themselves.

The Gallery members - some of them - have suggested that their employers pay rent for the space occupied. We are not anxious to make the Members of the Legislature landlords to the media. Furthermore, in individual cases, the payment of rent could well impose a hardship and, as a result of such hardship, the right of access might be limited or denied.

Within the precincts of the Legislature itself, we believe access must be allowed all members of the Gallery and that such access should be free. Should adjacent premises be made available on a voluntary basis, then it might well be appropriate that these be rented, again as is the case in Ottawa. While we feel the Legislature ought to be the domain of the legislators by right, we would not attach to it the right to sublet.

Some other matters were raised with the Commission in the brief submitted by the Gallery. Among them, the hope was expressed that this Commission would conduct "an investigation of information services in the various government departments." Without going further into the arguments expressed in the brief in support of this, and without expressing any personal opinions on the subject which the Commissioners might have, such an investigation is outside our terms of reference.

This does, however, lead us to a further point. The Legislative Press Gallery has become something of a misnomer, for while the members of the Gallery do indeed cover the Legislature when it is in session, they also cover the Government, the Premier's offices, and the ministries all the time. Of the news produced by the Gallery at Queen's Park, much if not most of it relates to government, ministerial policy and departmental activity, not to mention the multitude of government boards and commissions.

Most of the Ministry, aside from the Premier, occupy offices both in the legislative building and in buildings adjacent to it. The offices within the legislative building allow the Ministers quick access to the Legislative Chamber when the House is sitting; the bulk of their work, however, is carried on in their departmental offices where the great majority of their deparmental staffs are located. Therefore, the Gallery's present offices within the legislative building are not especially convenient in terms of its accessibility to the Government.

As government continues to grow in size and complexity, it is axiomatic that the media will spend more of their time and produce more of their news in covering the Ministry. Like it or not - and many of the Private Members do not - members of the Gallery are becoming Ministry correspondents at Queen's Park so that, in reality, the term "legislative correspondent" becomes an anachronism. It hardly needs saying that this is not unique to Ontario, but is common to most legislatures in the world.

The implications are clear: Members of the Legislature should rightly have prior consideration given their needs and requirements within the legislative building. The Ministry already occupies a good deal of space within the building but, of course, Ministers are also Members. The Legislature, however, with regard to its present and future requirements for space, facilities, and service staff, could not be deemed to have any special obligation to accommodate the media whose prime function has become that of covering not the Legislature but the

Government.

In summary, we would emphasize again the importance of upgrading the common facilities now provided the Gallery within the legislative building. These would include the documents room, the so-called "hot room", the news conference room, and the mail room.

An improved system should be devised to ensure that all documents produced by the Legislature or tabled in it by the Ministry are speedily available to the members of the Gallery.

It should be recognized - and perhaps it should be done formally - that the Gallery holds the right to determine its own membership, lay down its own regulations, and impose its own discipline on its members. God forbid that the Legislature or the Ministry accept such responsibilities. Nevertheless, it should be accepted that, with respect to admission to the Gallery, those refused such membership may appeal to the Speaker. Membership in the Gallery ought to be a right to be determined by the constitution laid down of that body, but one hesitates to make it absolute.

As matters now stand, the Gallery has the power to suspend any of its members for breaches of discipline. In so doing, the possibility exists, however unlikely, that it deprive the Legislature itself of coverage by, for example, a major television network or one or more daily newspapers for a significant length of time. The Gallery brief to this Commission makes this abundantly clear.

Such a power should not be lightly consigned. Plainly, it is not lightly held. But the difficulty in embodying such power in Statute by the Legislature, without right of appeal, would be tantamount, in theory at least, to allowing an external authority to censor the Legislature itself or, at the least, to limit arbitrarily the coverage of its proceedings.

For this, and for other reasons, the Legislature would be wise, in our opinion, to maintain its relationships with the Gallery at arm's length and reserve, to itself, the right to intervene in some circumstances, however unlikely or extraordinary, in order to secure its own interest.

In similar vein, the Gallery brief proposes that the Legislature, by Statute, abrogate its right to hold closed - or secret - sessions. The possibility of its doing so seems remote, but its right to do so would remain, whether or not such a Statute were in existence. As the Gallery would agree, the Legislature makes its own rules, and may do so at any time - since it is a free parliament - even to the extent of negating established rules. The same must be said for meetings of legislative committees, although the need to do so is less clear and the right to do so remains subject to the Speaker's ruling, or a determination by the Legislature itself.

Finally, the Commission recognizes the concern and anxiety felt by the Legislative Gallery with regard to its daily place and permanence at Queen's Park. Obviously, the membership is not only keenly conscious of its responsibilities but sensitive to its rights and prerogatives. Furthermore, the members have a discernible affection for the legislative environment. The Members of the Legislature should take note, and be firm in their insistence that the media be comfortably accommodated and their requirements diligently served.

To ensure this, Mr. Speaker should appoint a small, tri-party standing committee made up of Private Members, members from the Gallery, and himself so that consultation and continuity may be assured, and the interests of both legislators and the media more easily reconciled.

INFORMATION REFERENCE SERVICE

The members of the Commission have been as generally aware as most citizens that government in Canada and Ontario has been getting more complex, and the bureaucracies larger and more diverse. We have also been aware of much general and optimistic chatter over the past decade about "communications" and "the wired city" and "knowledge is power". There has been a balancing expectation to the rising complexity and diversity of governments in a faith that telecommunications and computer magicians can straighten out most difficulties and put each of us in touch with anything we might want to know.

Despite such general awareness on our part, we were well into some specific problems of our mandate before we began to see that the capacity (or the lack of it) of citizens to find their way through government rules, regulations, services and intentions was at the core of some major difficulties for the Legislature of Ontario. We found MPPs (and Federal MPs too) flooded with requests from citizens for information and advice. In responding to this rising flood, the need for more services for elected representatives was obvious, and we recommended a number of such services. But it also became clear to us that there must be a halt to the growing emphasis on the MPP as a constituency case-worker and information officer. That an elected representative should be called by a citizen with an individual or group problem in which the Government may have an involvement, is sensible. That the same representative should be handling dozens of inquiries a month for routine information is not sensible.

The reasons why citizens turn to MPPs and MPs are clear enough. Most Members are well known, and people recognize that an elected representative will give their query attention for the most obvious reason. It is also obvious that in a province which has four levels of government, affecting most of its population in one way or another, there can well be confusion or ignorance about which government or which agency is

responsible for what. There is also the factor that, with great size and great concentration in bureaucratic terms, it is not easy for government departments or agencies which serve the public to be physically close and available to much of that public, or to retain the high standards of courtesy and service that usually prevailed in the past when government operations were less diverse, much smaller and less impersonal.

While we have been impressed with the opinions of most MPPs about the quality and alacrity of service provided them by Ontario's public servants, we also sense that sheer growth is now putting Ontario government into the scale where impersonality and diversity are making it more distant insofar as most citizens are concerned. At the Federal level, Ottawa has tried to meet this general problem with the creation of Information Canada. Ontario has tried the Citizens' Inquiry Bureau. The general intention of those at the centre of government who are concerned about this matter is to get information about what the government is doing, or would do, or expects citizens to do, out to the citizen. At both levels of government, the tendency has been to create a new agency or service which cuts across - that is, is horizontal to - all departments of government. It is also clear that such a horizontal creation has had a difficult time attaining co-operation and support from vertical or "line" departments and agencies of governments which see such a service as an interference in their affairs, or a dilution of their services to the public.

What has struck us about this problem area of information is that a system to handle it is already in place in the form of the library system of Ontario, both in the public libraries and the college and university libraries, all of which have been largely developed and supported through provincial legislation and funding. Many excellent libraries in Ontario now provide an exemplary information service to their patrons. There are few (if any) provincial departments with the collections of reference information, or the skilled searchers for such information, that can be found in many libraries in Ontario.

What we do not have, however, is the widespread recognition by most citizens in Ontario that the nearest sizeable library can answer their queries; nor do we have a general standard for such service that has been planned specifically from the point of view that there should be places throughout the Province where citizens may find answers to queries about governments and their services as a matter of ordinary right; nor has anyone advanced the thought that such a province-wide service, linked by telephone trunk lines and telex, could be assisted by specific provincial funding in order to create a high quality, province-wide information and reference service for Ontario.

One strength of such a service would be its series of bases in communities; another would be its undertaking that what could not be answered would be referred; another would be the adjustments which governments could make to its services and materials as a running province-wide profile of inquiries revealed concerns and inadequacies.

Few people anywhere use the telephone as much as Canadians. Few people anywhere have a more extensive library system based on public funding. Ontario has the training facilities for librarians and library technicians and a good standard of professionalism in library reference service. Both the basic reference collection for a thorough, telephone-answering service with support material (say with forms, documents, statutes, etc.) for drop-in visitors, and the employee and line costs for staffing and working the service, can be easily established. It seems obvious to us that such a thorough, pervasive service, using so much of what is already in place, will come at a very cheap figure, in contrast to expensive attempts by individual departments and agencies throughout Ontario to extend their own public information service.

With few exceptions, government departments and agencies throughout Canada are involved in the preparation of information for the public and its distribution, either second-hand through the media or directly to the citizens through mail or by contact at offices. What we are suggesting

is really a different conception based on a somwehat different concern.

We would want every citizen in Ontario to know there are places near him where he can go, or phone numbers he may call, where he will get information about any level of government and its services or, even more important, directions on where to call or write.

This would be a system which starts with the citizens, whatever their various needs and interests. It would not originate or prepare information. Once this system is in place, of course, it will provide useful data on what it is that interests citizens and what is effective in serving their interests.

As the system is developed, a firm liaison with the Legislature and its Members, through the Speaker and the Committee on Administration, would be established. It would be important that effective means be created to:

(a) route callers who want to deal with their Member, or who would certainly profit from his or her advice;

(b) provide a periodic profile of the categories of inquiries requested of libraries in various regions;

(c) place the Legislative Librarian of Ontario on the administrative council or board of directors responsible for the system, along with at least one MPP from the Committee on Administration.

The Commission recommends that the Speaker and the Government, in co-operation with the Ontario Library Association and the Ontario Library Trustees, consider the establishment of a network linking with telephone and telex a number of libraries in the Province which would commit themselves to providing a public information and reference service during

library hours six days a week; this service to be based on a common basic or nucleus collection of reference materials, reached by telephone numbers which would be well publicized regionally. Its purpose would be to give every Ontario citizen a source to call for information on anything to do with all levels of government, including immediate answers where possible, or forwarded to the appropriate source where it is not possible.

COMMISSIONS, BOARDS, AGENCIES, ETC.

In the past few years the Premier's Office has been compiling an exhaustive list of boards, commissions, committees, etc. and appointments of the Government of Ontario. It is a long list or index, running in its most recent form to more than forty pages, and with well over 300 entries (332 in 1973). We referred to this proliferation in our First Report (pages 35 - 39) in supporting our recommendation (1.4) that "The practice of appointing MPPs to permanent boards and commissions be discontinued." We noted that there seemed to be at least five discernible varieties of boards, commissions, committees, authorities and other agencies created by the Legislature.

In the Fourth and Fifth Sessions of the 29th Legislature further boards, agencies, etc. were created; some, like the Ombudsman and the Special Review Board, of importance; others of either less stature or narrower significance.

The quantitative abundance reflects the massive growth in the scale and breadth of Government activity. It is recognized by those in or close to the Government and the Legislature. What is lacking at all levels, and in the general public among those citizens who take a keen interest in public matters, is any over-view (or any review) of how these agencies and appointments relate to government or how each agency or appointment functions in terms of authority, and whence the latter stems. Information is not readily available on what these agencies do - i.e. the scale, nature and cost of their activities or their relationship, actual and as stated in Statute and regulation, with the Legislature, the Premier's Office or a Minister or the officials of a Minister's department.

The Commission is NOT raising questions about the need for such agencies or the responsibilities of the Government in proposing them and

the Legislature in approving them. One argument in favour of setting up quasi-governmental agencies is to allow them and their members, free of partisan interest and pressure, the freedom of arm's length from the regulations, checks and reporting which govern the civil service including, in some cases, the detailed scrutiny which is applied, at least in theory, by the Legislature to Government departments. The Commission feels this argument deserves some re-examination in the light of the increasing scale of public business now being conducted by such agencies.

Anyone who scans the two lists provided us by the Premier's Office - "Agencies and/or Appointments by Ministry" and "Special Purpose Bodies of Ontario, Listed by Ministry" - comes to two rough conclusions. The first one strikes home, in particular if one has some memory for Ontario political history, that at the time of the creation of each agency there seemed to be excellent reasons for it, often an urgent need to deal with a suddenly recognized or occurring problem. The second conclusion is more vague: that time may have made some of them redundant or, more likely, some agencies are in need of re-examination as to their justification, and their enabling powers likely need some repair or adjustment.

We would propose that a committee of the Legislature undertake a review of all the boards, agencies and commissions, assisted by a staff selected for that purpose. Clearly, it is a task that would probably occupy the committee through an entire legislature. The examination should study all these agencies in terms of redundancy and overlapping. Is an agency now necessary? Is it doing the task it was supposed to do at its creation? Has the nature of its work and spending changed since it was created? More generally, can the committee determine some principles and suitable categories (with descriptions of type and authority and methods of appointment and replacement and observance of the worth of the system of reporting for each agency)? What are, and what should be, the relationships of the various categories of "special purpose" bodies to the Legislature?

We think this work should be carried on by one of the small standing committees which we recommend, perhaps the Committee on Petitions. The nature of its main work will be random, depending on the flow (or lack of it) of petitions seeking redress or expressing grievance or asking for some action by the Legislature.

Obviously, the chore we suggest is not one that will create a lot of fanfare and controversy. The work is detailed and voluminous. We believe it would be very important, particularly in developing an appreciation of how the Legislature may take a greater responsibility towards what it has itself created.

TRANSLATION

In 1967, the Legislature of the day came to an agreement that Members who wished to speak in French, one of two official languages of Canada, were entitled to do so. This was not done by any legislative act which gave the French language an official status in the Assembly, or in Ontario as a whole, beyond that which it has under the present constitution.

On occasion, since 1967, speeches have been made in French by Members. These remarks are reported in Hansard in French. No translation is provided either in Hansard or in the Legislature itself for the benefit of the Speaker or other Members while the remarks in French are being made.

It is the Commission's view that this is the way the situation with regard to immediate translation in the House should be left. We think consideration should be given to providing a translation into English in Hansard of remarks made in French (printed seriatim to the report in French). We are aware, as all Members must be aware, that there is an awkward anomaly in having the right to address the Legislature in French, while knowing that in practical terms almost all the Members do not know, and have no means of being immediately informed as to, what is being said.

ADJUSTMENT OF REMUNERATION

It is now two years and three months since the raises in indemnities and allowances which this Commission recommended were put into effect by actions of the Legislature. Anyone re-reading the analysis made preliminary to making the recommendations which raised the basic indemnity $3,000 annually, the tax-free expense allowance $1,500 annually, and provided for expense allowances relating to lodging and travel, will find that we had much concern over the rising cost of living over the period of almost four years since MPPs last had an increase.

At this time, with the 29th Legislature dissolved and another Legislature due later this year or early in 1976, inflation and escalating costs have again raised the problem of remuneration for MPPs. Indeed, the basic StatCan cost-of-living index has gone up marginally more in the two years since our recommended raises than it did in the longer period between them and the previous adjustments.

On pages 75 and 76 of our First Report we examined the possibilities of a continuing review of indemnities, salaries and allowances. We sketched four methods that might be used:

(1) a tie-in with the cost of living index - i.e. a permanent "cola" clause;

(2) indexing tied to percentage increases achieved in collective bargaining, perhaps to a provincial composite of weekly wages and salaries;

(3) linking increases of MPPs to awards to provincial civil servants in certain executive categories; or

(4) some form of commission similar to this one could be given the task of making a finite recommendation right after each general election.

We did not recommend in favour of any of the four methods. The last method, to which we had the most sympathy, had the failing, as we saw it, of removing the initiative from each government, post-election, in a matter where it must have the responsibility.

It is clear to us at this time that something will have to be done about raising indemnities and allowances for the Members of the Legislature in the next Legislature. We think there may be some advantages to the legislative and the partisan processes in Ontario if we make the point without equivocation at this time. We are not seeking a renewed mandate post-election. We do advise the leaders and Members and candidates of all parties, and the citizens of Ontario, that one of the early responsibilities of the next Government of Ontario should be to determine with dispatch, and in some reasonable way, what those increases should be.

REPRESENTATION

and the Number of Members in the Legislature

The first Ontario Legislature of 1867 had 82 Members. Why? The British North America Act directed this to be the number for the first election in Ontario; later, the Legislature itself could change the numbers - which it has frequently done; but that was the start. For the election of the 30th Legislature of Ontario there will be 125 Members (and constituencies).

The Commission has some strong views on representation. Therefore, it feels a brief review of the origins and development of representation in the Province is necessary. A readable summary of the history of representation in Ontario until the mid-1960s can be found in F. F. Schindeler's Responsible Government in Ontario (University of Toronto Press, 1969) from page 81 to page 92.

Before Confederation began to work, its leading architect, Sir John A. MacDonald, said representation in Ontario would be based on numbers and territory - i.e., population and square miles. However, the figure of 82 Members for the first Ontario election seems to have been developed quite pragmatically. The politicians of the incipient Province of Quebec were concerned that Quebec representation in the House of Commons be set and fixed, and that representation of other provinces be in a ratio to Quebec, particularly Ontario.

Much of the politics of the Union of Upper and Lower Canada before 1867 had been tussles over representation and the principle of "rep by pop." Indeed, much of the motivation for Confederation in Upper Canada was to escape from the bonds of "double majorities" and "saw-offs" with the groups of Members from Lower Canada.

The margin in population in favour of Upper Canada had been widening in the 1850s and '60s. When the Fathers set 65 Quebec seats in the projected House of Commons as the basic determinant of representation for Confederation, the figure of 82 seats for Ontario corresponded roughly to the population ratio of Quebec to Ontario - 65 to 82.

Representation through the election of Members had first come to what is now Canada after 1791. At that time, the role of the Governor and the appointed council was dominant and elections were based upon a very limited franchise. Representation in numbers grew out of geographical representation and the development of new counties and townships, which in turn were formed when so many families were settled in an area. That is, there were no theories and few principles about representation, other than the creation of a seat and representation by a Member as settlement progressed and filled in. There was never an initial and exact formula which stemmed from the hard question: How many people, in what size of region, must there be before they deserve a representation of their own?

In 1867, with a Legislature of 82 Members, the population of Ontario was at 1.5 million. That is, the average population per riding would have been just over 18,000. Of course, some ridings had more, many had less.

In its first year the Ontario Government had annual expenditures of slightly over $1.3 million. It is hard to state exactly how many government employees there were but the total was less than two hundred. The Cabinet consisted of five Ministers, including the Premier.

In 1974, 107 years later, the annual expenditures of the Ontario Government are over $10 billion, the population is almost eight million, and the number of employees, including those of provincial enterprises, crown corporations, boards, commissions, etc. is about 140,000. For a

time in the last session of the 29th Legislature there were 27 Ministers, aided by 12 parliamentary assistants drawn from the Government Caucus. (That is, well over half the Caucus was in the Ministry or associated with it.)

We have noted elsewhere that there are now well over 300 boards, commissions, authorities, etc. created by the Ontario Legislature which hold and exercise powers delegated by the Legislature.

The number of Members in the Legislature reached a high of 113 in 1919, dropped to 90 in 1934 (an economy measure!), then inched upwards to 98 in 1955, to 108 in 1963, to 117 in 1967, and after 1975 it will rise for the 30th Legislature to 125. Thus, there was renewed recognition in the past 20 years that more Members and ridings were needed, essentially in order to give more effective representation at the local level, to compensate for immense urban concentration and to provide some elasticity for regions with wide population scatter.

Until the report to the Legislature of the first Ontario Redistribution Commission in December, 1962, redistribution had been carried out in the Legislature (naturally through long decades dotted with charges of gerrymandering).

This first Commission floated its "reasonable maximum size" for the Legislature as 120 Members. It also set out some reckoning of appropriate population ranges for three kinds of ridings which it distinguished: rural; urban; and urban-rural. The "reasonable" ranges for the population of such ridings according to the Commission were: rural - 25,000 to 50,000; urban - 60,000 to 75,000; and urban-rural - 50,000 to 60,000. That is, the range from the least populous level recommended to the most, was from 25,000 to 75,000. In passing, we note that this is a substantial spread and could, depending on the apportionment of seats into the three categories, include a very strong rural bias.

The Legislature and the Government at the time of this first Commission were much concerned with giving Metro Toronto ten more seats. This was done on an "ad hoc" basis and not by any clear formula. The redistribution did not occasion large scale public protests, indicating at least the acceptability of the Commission's reasoning and probably the comforting reality that the rural and hinterland parts of Ontario did not lose seats as they would have done from a more rigid application of "rep by pop."

Two subsequent redistributions have taken place under the aegis of what have been effectively "successor" commissions to the first one. The 108 seats of 1963 rose to 117 in 1966, and to 125 in 1975. The most populous riding is still almost three times the population of the smallest. On the whole there has not been a noticeable public demand for a more equitable exercise of the principle of "rep by pop" even in the major urban centres, nor deep discontent in the less populated parts of the Province over what have really been minor adjustments in their constituency boundaries.

We note that this process of redistribution by commission initiated in 1962, has been a remarkably flexible one. The commissions have not been created by Statute, rather they have originated through orders of the Legislature. That is, the process is not what one might call a constitutional one or embedded in the written constitution. This flexibility would be useful in any follow-up of our recommendations on representation. There is no "straight-jacket" in our recommendation that there should be substantial expansion of the Legislature's membership to meet the needs of the Legislature even more than to reflect demographic change.

Our scan through the past record of debate over the size of membership of the Legislature underlines that there has always been a dominant concern over local and regional representation. That is, the

population growth in the Province as a whole, and the demographic transfers to the cities, required the redistribution to retain a semblance of the principle of representation by population. But this was always tempered by a broad determination to retain representation for those areas which the application of strict mathematics would have deprived. Such redistribution of ridings would have meant repeated and sharp drops in the numbers of Members representing rural and hinterland Ontario. The limited expansions of the Legislature in post-war times are largely explained in terms of escaping from such deprivations.

It is hard to find, except in occasional editorials in the big city dailies, the case for a really major increase in the number of Members, and their emphasis has been on fairer shares for the cities. Nor have we found much discussion on what the ideal figure for the population of a riding should be, or the ideal ranges in a constituency's area. The emphasis is invariably on adjustment - never on the need for a larger legislature to handle with greater competence the now staggering load of legislation and scrutiny. Occasionally, there have been suggestions in legislative debates that more Members would provide a larger talent pool from which the Premier-elect could draw an able Cabinet.

No one has really made the arguments and popularized them in the parties, that bigger and bigger government should be matched by a bigger legislature. This is the argument the Commission wishes to make to the Legislature and to the citizens of Ontario. As we see it, the primary difficutly in getting acceptance for the enlargement relates more to the political psychology of the Province and the defensive (even the inferiority) complex of our politicians.

We can foresee the outcry about more drones to draw on the honey-pot of the taxpayers' moneys, and reiterations that we already have too many politicians and too much politics - what we really need is more efficiency and less politics.

In each report of the Commission we have argued, then argued again, that the elected representatives must devote more time, energy, thought and skill to their legislative and scrutinizing functions. We have regretted the apotheosis for the constituency function and the gigantic growth in the constituency "caseload" of the MPP at the expense of his role as both legislator and partisan at Queen's Park.

It is important to our argument to take the rounded figures on Provincial spending and employment in the post-war period, particularly since the Redistribution Commission postulated a reasonable maximum size of 120 seats.

In 1945-46, the total expenditures of Ontario government were only $132.3 million. (The population was 4 million.)

In 1955-56, total expenditures were $507.7 million.

In 1965-66, total expenditures were $1,450 million.

In 1975-76, total expenditures will be some $10.5 billion.

Since the first Redistribution Commission report the number of direct Provincial employees has tripled.

The general point we are making from this rough data is that an explosion in Ontario government growth, in revenue raising, spending, employees, and in agencies with delegated powers, has taken place in the past 13 years. This growth is huge and should have much significance for the responsibilities of the Ontario Legislature.

Data in the Statistics Canada quarterly, Provincial Government Employment, shows that in the last quarter of 1974 there were close to 85,000 employees of Ontario government departments, some 3,500 employees of Ontario administrative and regulatory agencies, and 16,000 employees of government-owned and financially supported

institutions - i.e., a direct provincial employment of close to 105,000 people. In addition, another 34,000 people worked for Provincial overnment enterprises which report in some form or other to the Ontario Legislature.

This is only part of the employment picture in Ontario that is sustained by or closely related to the Government. There are approximately 100,000 primary and secondary school teachers, almost 3,000 library workers and almost 100,000 hospital, medical and social workers who are employed by organizations which have been created and are regulated and examined through the effects of provincial legislation, and largely funded through provincial channels.

This employment data reflects large scale government in Ontario. It is a far cry from 1867 and less than two hundred provincial employees, or 1907 when there were less than a thousand, or 1939 when there were less than eight thousand, or 1965 when there were just over forty-five thousand employees.

We reiterate that relatively the Legislature has been static in both size and methods while this immense growth and reach and spending of the Government has taken place. Sessions have lengthened, of course, and the idea that being an MPP is a full-time job has largely taken hold.

The Cabinet part of the provincial system of government has adjusted much more than has the Legislature by expansion in numbers, both of the elected representatives and the support staff. In the late 1960s a layer of "parliamentary assistants" drawn from the Government Caucus was provided to aid a dozen of the Ministers.

The original Cabinet of 1867 had five Members, that of 1975 has had 27 Members. Premier Robarts cut back to nineteen Ministers from Premier Frost's high of twenty-two. But that cutback did not last long.

The requirements of the executive side of government have brought more Ministers and the parliamentary assistants. Thus we note the obvious again: that in the 29th Legislature over half the Government Caucus was either in the Ministry or bearing a direct responsibility to it.

This growth in provincial employment, budgets, and the executive branch is even less surprising when one appreciates that two new levels of involvement for the Ontario Government have emerged in the last twenty years.

The regional and metro government concepts have made for far more complex and bureaucratic arrangements and a much greater ministerial workload.

Almost as significant in terms of work, perhaps more intrinsically important, is the emergence of on-going federal-provincial relationships and liaisons which involve Ministers and officials on a regular basis. Indeed, some of the most fundamental planning, negotiations and decisions now take place within this apparatus of conferences and continuing consultation. The Federal Government has created a Secretariat for Federal-Provincial Relationships. There are a host of joint programs and a web of continuing work between federal and provincial officials and agencies. Whatever one may prefigure about the future, it seems obvious that this web is going to thicken.

It seems realistic, not provincially jingoistic, to offer the view that the so-called "action" and responsibilities of a provincial government as large as Ontario's are closer to the citizens, comparatively speaking, and more complex, and - in terms of legislative and administrative load - heavier, than those borne by the Federal Government and the Parliament of Canada. It is clear from our history that at Confederation the provincial governments and legislatures were seen by the Fathers as inferior to the Dominion Government and the Canadian Parliament. That "inferiority" is gone, partly through judicial decision,

more through the development of provincial responses to needs of the people and the economy - in health, education, transportation and natural resources.

In passing, we note that the primacy given to businesslike efficiency and organization, at least as a highly desirable imperative for government, has been demonstrated in a number of reorganizations of the Government in Ontario, notably the one which followed the recommendations of the Committee on Government Productivity in 1971. Such analysis and recommendations are surely worthwhile and not in need of any critical justification. But the very emphasis which they symbolize is part of the problem of Ontario politics and the real role of the Legislature.

In political theory, our government - i.e., the ministry, the departments, the officials, and the diverse agencies - has its first cause or sky-hook in the legislature of the people's representatives. It is the approval of the legislature which creates the government fabric and which approves the spending done. It is in the legislature that the government answers, or should answer, for its actions and performance as raiser and spender of the public funds. Unfortunately, this creator of government institutions, this watchdog on government operations and spending, has drawn neither the interest in its own relative efficiency nor a comparative concern about how it should adjust to the realities of big government and spending.

The politicians and the parties bear much of the responsibility for this nearly total lack of analysis or suggestions for modernizing and reforming the central and basic institution of parliamentary democracy.

In some of our recommendations we have asked for help for the legislators in terms of more and better research backing for the Members, caucuses and the legislative committees. A much revamped and

independent legislative library is one aspect of these recommendations. Substantial improvement in secretarial assistance for individual MPPs is another. The fulfilment of such recommendations will help to improve the performance of the Legislature. But on the face of it these are minor adjustments compared to those that have been made by the executive and administrative parts of Ontario Government.

We are not trying to postulate a heftier legislature at war with a gargantuan government, although there is the principle in parliamentary theory that the Opposition has an "official" duty to oppose. Rather, we are touching on a central dilemma of modern politics: how does a general-purpose politician-legislator deal intelligently with a bureaucratic machinery of government which, aside from protection of anonymity of officials and over-ride of ministerial responsibility, has an immense amount of specialized expertise, a most well-developed planning and administrative apparatus, and remarkable resources available in consulting specialists?

Aside from what more Members of the Legislature would mean in potential for more intimate identification with and representation of voters' interests, as individuals or in groups, simply by giving each legislator a smaller territory and fewer people as a responsibility, we think an increase - say to 180 MPPs - would likely produce more effective caucuses, better manning, and more informed MPPs in legislative committees. It would also draw a much larger complement of talent into the whole institution.

Time and again we have heard, especially from Opposition Members, how hard it is to staff adequately any substantial committee hearings of depth, or how diffused their energies and talents become in mustering spokesmen for the debates and the scrutiny of Estimates in the Legislature itself. Aside from the numbers which the fate of an election may apportion to a party leader and caucus in the Legislature, there is no doubt in our minds that a larger pool of seats would either give the Premier more choices for an abler Ministry and better parliamentary assistants, or the Opposition a better chance to fulfill its basic

functions, or hopefully both.

To those who will decry the expense of such expansion we ask for some appreciation of relativity, harking back to the rough data with which we opened this section. The cost of the Legislature and of elections and the whole party process is truly a pittance compared with the recent, present, and future costs of government in Ontario. Does it make sense to enlarge the Legislature only marginally over many years while the scale and complexity of government steadily rise?

In conclusion there are several points to make from our observation of the operations of both the Canadian and the British Houses of Commons and other legislatures in the United States. The trend everywhere has been to devolve much legislative, investigative, and scrutinizing work once done in the full House or Chamber to committees. This has invariably required the development of many committees, not just a few, because of the diversity of government operations and the specialization of interests.

Such expedients as allowing any Member a voice, if not a vote, in any committee and permitting easy substitutions on committees have evolved to meet the wishes of Members with a wide range of interests and the needs of Members in their caucuses to switch concentration and adjust talents as the legislative schedule and the current public interests require. In every jurisdiction we examined there have been debates on the best size for an effective committee. A real problem in the Ontario Legislature circles around this question. The Opposition parties in particular, but also the Government Caucus, are often strained to find the men and women to do long, intensive committee work.

Given a Legislature of only 125 Members (post-1975); given a Ministry plus parliamentary assistants of almost forty Members; given the likelihood that Ontario is not going to revert soon to the simplicity of the two-party system on which parliaments in the British tradition were once set; given the withering away of the substantial number of

"safe" party seats in Ontario; given the certainty that more, not less, committee work is ahead; given the obvious that there will be more, not less, intensive partisan work required of Members particularly in their ridings; given the constituency caseload situation and its steady escalation, we believe a more effective legislature requires substantially more Members.

Let us vault back to our opening argument: 180 seats of equal population in 1975 would give an average constituency population of around 44,000. In 1867 the mean constituency population would have been 18,000 people if distribution had been equalized. In 1962 when the first Redistribution Commission suggested that a "reasonable maximum figure" for the Legislature would be 120 Members, this would have worked out to a mean figure of population for each riding of 51,000.

Thus an equalized riding population figure of 44,000 is not a drastically smaller number than that indicated by the Commission and, as we have pointed out, almost every aspect of Ontario government has grown or intensified since 1962. Further, the figure of 44,000 is not far below the middle of the range from 25,000 to 75,000 suggested by the Commission of 1962. Of course, the membership of the Legislature is larger than when the Commission first reported. Indeed, the membership has gone up 14% since then, and the latest figure of 125 Members will obviously remain there until the 31st Legislature, probably to come post-1979. Since 1962 the annual budget of the Province has increased tenfold and the number of provincial employees has gone up threefold.

We believe that the significant expansion we recommend - 50 more seats for the 31st Legislature - would provide the roominess or amplitude so those assigned the task of reapportionment could follow a formula which recognizes some definitive margins in numbers of people and square miles.

CONSTITUENCY OFFICES

In a previous report, the Commission was reluctant to recommend establishing constituency offices for the Members at public expense. Since then Federal Members of Parliament have been provided funds for such a purpose and the great majority of them now have offices in their constituencies. It could be argued that a better case can be made for the Federal Members, since the Canadian Parliament holds longer sessions than does the Ontario Legislature and, more importantly, the physical distances between Ottawa and Members' constituencies are considerably greater.

While this is all true, it can be argued that provincial constituency offices would provide a more needed service since the average citizen is more affected by provincial legislation and services than by the federal counterpart.

Again, returning to our original consideration of the question, it was our belief at the time that, through the reforms we had proposed with respect to party financing, the parties themselves, and their constituency associations, would have the means to establish constituency offices where such were desired. However, not all the proposals we made have been implemented, notably that of a tax check-off.

The tax check-off, as we then argued, would have immensely increased the number of individuals contributing to the party of their choice and would also have been, for the parties themselves, a significant source of income.

The check-off system of party fund-raising needs not only provincial acceptance but federal as well, owing to the methods by which our taxes are gathered. While we understand the matter has been one of discussion

between governments, the check-off remains in abeyance. Thus, some of the funds our recommendations were designed to create have not been forthcoming.

On further reflection, it may well be that a constituency office financed by the Member's local or provincial association would not be as suitable as would an office financed through public funds. After all, such a facility is intended to serve all of the Member's constituents whether they are supporters or otherwise; a designated party office could inhibit some who require assistance from their Member but who would hope to seek it in a more neutral environment.

It will not be news to those who have read our previous reports, that we believe the problem of the constituent case-load is a real one for many provincial Members. The most effective means of servicing this case-load is, in the vast majority of examples, through an office, adequately staffed, and appropriately located in the constituency. With such a facility, the needs of constituents can be more swiftly identified and dealt with, even while the demands upon the Members that they be present in the constituency should be lessened.

The argument is made that constituents with problems could or should write their Member; indeed, they may call his office at Queen's Park. But, in simple reality, not all constituents are at their best in composing letters expressing their problems nor are they often comfortable talking to a detached voice on the telephone.

The need for information and for the servicing of legitimate constituent concerns is demonstrably present. Members of the Legislature are paid, among other reasons, to meet and satisfy these needs. In the Commission's view, this can best be done - from both the constituent's and the Member's position - through the provision of publicly-funded offices in the constituency.

In very few cases, such an office is not feasible. In some northern areas, where the population is dispersed, it will be impractical. In these examples, subject to the Member's own view, a comparable service could be provided by the use of a caravan, or by allowing the Member a commensurate amount for periodic travel through the constituency. For the great majority of Members, however, it will be possible for them to establish an office centrally located in the constituency, reasonably accessible to the public.

In considering this recommendation, we have been aware of the objections frequently expressed that constituency offices tend to support the political status quo - which is to say, they are of value to the sitting Member in terms of future electoral prospects - and, further, that the constituency office will no doubt be employed for partisan as well as for other purposes. It would, it seems to us, be impossible to keep partisanship from the door, much less to try.

The priority consideration here need be neither so narrow nor so esoteric. The first consideration is the constituents and their reasonable expectation that they may have access to their Member and to information services which the Member is uniquely capable of delivering. That the constituency office is useful to the electors is fundamental; that it may benefit the sitting Member is incidental.

As to partisanship on the premises of a publicly-funded office, it only needs saying that the constituency office will be no more, or no less, partisan in its uses than is the Member's office at Queen's Park, or the Member's desk in the Legislature. Members are politicians, politics are partisan, and it is bootless to attempt to quarantine any area inhabited by politicians from political considerations that are natural to legislative life.

We recommend that each elected Member of the Legislature be entitled

to a constituency office and to the services of one employee, each at the expense of the public treasury. The costs of premises will vary significantly, but the treasury should be prepared to pay for reasonable space at going rates in the particular constituency. Additionally, salary for office help should be commensurate with salaries paid to the employees of the Members in their legislative offices.

Terms of leases and salaries for those employed, should be negotiated by the individual Member and be approved by the Speaker who should also, in our judgment, recommend sensible guidelines and expenditure ceilings.

All expenses for the maintenance of such offices should be submitted to the Office of the Assembly for payment and should be published annually in the official Hansard.

A P P E N D I X

ONTARIO COMMISSION ON THE LEGISLATURE

FIFTH REPORT

PARLIAMENTARY PRIVILEGE

and the

PUBLICATION AND RADIO AND TELEVISION BROADCASTING

of

PARLIAMENTARY DEBATES

Report by Dr. Edward McWhinney, Q.C.

As Special Commissioner under the
Legislative Procedure and Practice Inquiry Act
of British Columbia

Submitted to the Hon. Gordon H. Dowding, M.L.A.,
Speaker of the Legislative Assembly of British
Columbia

December 10, 1974

TABLE OF CONTENTS

I. Appointment and Terms of Reference of Special Commission

On May 30, 1974, the Speaker of the Legislative Assembly appointed me as a Special Commissioner under the Legislative Procedure and Practice Inquiry Act of British Columbia, with the following terms of reference:

To examine the publication, broadcasting, distribution and reporting of the proceedings of the Legislative Assembly of British Columbia by the various means of communication now existing, with special reference to the following questions: -

1. What authority, if any, is required for the dissemination of the proceedings of the Legislative Assembly, by publication, broadcasting, distribution and reporting; and in particular,

   (a) What legislative measures may be needed to ensure the full and lawful dissemination of the debates and proceedings of the House by whatever forms of communication exist? and

   (b) What is the proper balance to be made between parliamentary immunity for members of the House and a corresponding right of redress for those claiming to be aggrieved by reason of the wide dissemination of such proceedings?

2. For the purpose of effecting the above objects, what constitutional means, if any, are available to extend the parliamentary immunities referred to in the Constitution Act, R.S.B.C. 1960, which were not to exceed those existing in the United Kingdom in 1871?

3. What means might be considered to prevent or to remedy injuries to members of the public arising from defamatory or injurious statements in press, radio, television and such other methods of publication where members have qualified or absolute privilege, without resort to costly actions by persons affected and without state control of the press?

4. What distinctions, if any, exist or may be required to be considered in broadcasting debates by radio or television as compared to Hansard, and with respect also to delayed or replayed broadcasts?

The time factor in the Special Commission's work has suggested the merits of profiting from the public record of experience as to reporting and publication of Parliamentary debates, especially by the more conventional printed means, in both British Columbia and elsewhere. This public record includes, if we go outside British Columbia and look, for example, to Great Britain, a good deal of public testimony and evidentiary material deposed by interest groups drawn from various communication media (newspapers, radio, television) as to the competing community policies involved in public dissemination of Parliamentary debates. Such information is, of course, relevant and necessary to our inquiry as we now propose to define it, within the official terms of reference set for us: namely an examination of the existing constitutional law and practice as to Parliamentary privilege - both "received" British, and local; a canvassing of the underlying conflicting interests - public, social, and individual - of which that existing positive law represents the community attempt at balancing or reconciliation; and the application of that positive law and its own inherent policies to the printed publication and also to broadcasting (by radio and by television) of Parliamentary debates, having regard to the changes in the nature and range and impact of publication today brought about by the growth of nation-wide concentrations in the ownership and control of the communication media and by the development of new techniques and new forms of communication themselves. We speak, in this sense, of the transition from the visual (printed) mode of communication to the oral (radio) and oral-visual (television), with the extra directness and intimacy and power of persuasion necessarily involved in that switch.

II. Parliamentary privilege as to publication of Parliamentary debates and proceedings. Stockdale v. Hansard (1) and the Parliamentary Papers Act, 1840. (2)

The Bill of Rights, enacted after the Revolution of 1688, declares in its Article 9, that - "the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament."(3)

Article 9 of the Bill of Rights thus asserts the Parliamentary leaders' claim that was vindicated in the great English constitutional

struggles throughout the 17th century, to be free from arrest or other harassment by Royalist executive authority in respect to members' actions within the Houses of Parliament; though it seeks at the same time to retain the long-asserted powers of internal regulation and discipline of Parliament in respect to abuses of privilege or transgression of the rules of orderly debate.

Maitland, writing at the end of the 19th century, charted the still further development of this claim to Parliamentary immunity when he noted:

> "A member speaking in either House is quite outside the law of slander. He may accuse any person of the basest crimes, may do so knowing that his words are false, and yet that person will have no action against him. Had he uttered the words elsewhere he might have had to answer for them in a court of law, but for what he says in the House he cannot be sued." (4)

It was the attempt to extend this Parliamentary claim to immunity from the privileging of words uttered in debate in the House to the privileging of words printed by the authority of the House, that led to the great clash, in 1837, between the House of Commons and the courts, celebrated in Stockdale v. Hansard.(5) Hansard, the publishers, under the direct orders of the House of Commons, had printed a report of the Prison inspectors containing allegedly defamatory statements regarding the plaintiff. Although the plaintiff, in suing Hansard, failed on the merits because the jury found the statements to be true, Hansard had sought to set up the House of Commons' order for printing as a complete defence for the publication. On this particular point, however, the defence was rejected by the courts, Chief Justice Denman and his colleagues on the Court of King's Bench holding that even the order of the House of Commons could not justify anyone in publishing a libel. Thereupon a complicated series of political-legal manoeuvres occurred. The plaintiff brought another action, and the House of Commons, seeking a joinder of political issue with the courts, refused to allow Hansard to make any defence other than the defence of the order of the House of Commons for

publication. The plaintiff then obtained a verdict in damages and proceeded to levy the amount concerned through the sheriffs; but the House of Commons immediately committed the sheriffs and the plaintiff and his solicitor to prison. When the sheriffs next succeeded in obtaining a writ of Habeas Corpus from the courts, the judges reluctantly concluded that, the sheriffs being in the custody of the Sergeant-at-Arms of the House, under warrant of the Speaker of the House for contempt of the House of Commons they had, as judges, no power to set the prisoners free. (6) The political solution of the whole complicated affair was to introduce in Parliament a Bill to settle, once and for all, the disputed issue of privilege as to publication: the Bill provided that no civil or criminal proceedings could be taken in respect of any defamatory matter contained in any paper printed by the order of the House. As adopted by Parliament, it became the Parliamentary Papers Act, 1840 (7); and it is both still the law of Great Britain itself and also part of the British Parliamentary law "received" in British Columbia.

The summary protection that the Act of 1840 gives to persons employed in the publication of Parliamentary papers is clear: all legal proceedings in such cases will be stayed on production of a certificate from the Speaker that the paper in question has been printed by order of the House of Parliament concerned. Dicey suggests, and I think his argument is clearly valid, that the fact that an Act of Parliament was finally necessary to resolve the political conflict between Parliament and the courts in the Stockdale v. Hansard affair is the clearest possible proof that an order of the House is not of itself a legal defence for the publication of matters which would otherwise be libellous. (8) The legal implications of this argument are clear. Since the Act itself only privileges official publication made by the order of the House, other forms of non-official publication of Parliamentary debates and proceedings - meaning, here, all categories of publication not expressly made under the authority of the Speaker - can claim no statute-based protection and are thrown back to their defences, if any, under the Common Law.

III. Publication of Parliamentary debates. A brief historical excursus.

Historically, the attitude of Parliament to the publication of its debates has been somewhat ambiguous. Maitland reminds us that the Houses have not always been keen to have their debates published: during periods when the Houses and their Members had reason to dread the action of the Crown, they did well to insist that their proceedings be kept secret and to commit to prison those who broke the rule against publication. (9) This was certainly true throughout the 18th century; and even today it has to be remembered that the official reports of debates are made and published on sufferance, for the House may at any time resolve that its proceedings shall not be reported (10) as happened, in essence, with the rare, Wartime secret sessions of the House.

The 19th century constitutional historian, Medley, points out that the prohibition to print the debates of the House for the general public information can only date from a time when press had begun to be a recognized power; but even then Parliament showed itself as willing to waive its rights in the matter to gain popular support. (11) In 1641, for example, the Long Parliament, while for the first time prohibiting, without the leave of the House, the publication in printed form of speeches made in the House, itself undertook such publication under the title "Diurnal Occurrences in Parliament". Parliament was evidently somewhat partial or biased in exercising this power, for while speeches that were politically acceptable to the governing clique within Parliament were printed by order of the House, the private publication of his own speeches by a political opponent like Sir Edward Dering was severely punished. Again in 1680 the House of Commons directed the printing of its proceedings and votes, under supervision of the Speaker, as a means of controlling wilfully or negligently inaccurate reports of the Parliamentary debates circulating in pamphlets and in Members' own private letters to their constituents (12). In the 18th century, as we have noted, the Parliamentary leaders moved vigorously to restrain publication of their debates and punished those who violated the prohibition. (13) The Revolution of 1688 may have assured to the Commons liberty of speech as against the arbitrary interference of the Crown; but it was the victory of an oligarchy which

hastened to share its spoils by the exclusion of all outside influences from admission to the House - meaning, here, the presence of strangers at sittings of the House, and the publication of the debates in the House.

In the result, newspapermen began to resort to elaborate fictions to evade the prohibition and at the same time to convey the debates to their reading public, assigning the actual speeches that had been given to imaginary persons in an imaginary assembly or sometimes using nicknames of the actual members. Under the instigation of John Wilkes in 1771, wildly inaccurate reports of speeches began to appear, provoking another major political confrontation between the Parliamentary leaders and, this time, the City of London through its Lord Mayor and Aldermen who were backing Wilkes and the printers. As the upshot of the Wilkes affair, the House made no further attempt to assert its privilege against publication of its debates and proceedings. (14) Of course, the marked decline in Royal power and influence, by the late 18th century meant that one of the original strong motives for prohibiting publication of Parliamentary debates, and for excluding strangers from the debates (the strangers being quite often Royal spies), had disappeared. Maitland makes the obvious point that, in the absence of any such legitimate doubts or fears, it would be most unlikely for the House and its leaders to want to continue to hide their light under a bushel. (15)

The affirmative policy of publishing Parliamentary debates almost as a routine, perfunctory measure was no doubt immensely facilitated and accelerated by simple, structural changes occurring almost by chance in the physical accommodations in the House. Until 1834, reporters had been surrounded with difficulties: they were not allowed to take notes and were even liable to be crowded out through want of space or to be excluded with other strangers. After fire had destroyed the old Houses of Parliament, however, separate galleries were provided for the reporters, and since then the House of Commons has aided the publication of its proceedings. In 1835, the House of Commons directed that all its papers be freely and clearly sold. The daily recording and publishing of the votes of every member was initiated in 1836; and after 1839 the names of all members sitting upon

select committees, together with the evidence taken before them, were published. (16) The enactment of the Parliamentary Papers Act, 1840, as we have noted, confirmed and ratified the system of official, Hansard-style publication, under order of the Speaker, of the debates and proceedings of the House.

Yet, as to the other forms of publication, the old positive law prescriptions still remain in force. Lord Hartington had moved, on May 4, 1875, - "That this House will not entertain any complaint in respect of the publication of the debates or proceedings of the House, or of any Committee thereof, except when any such debates or proceedings shall have been expressly prohibited by the House, or by any Committee or in case of wilful misrepresentation or other offence in relation to such publication."

Though Lord Hartington's notice was simply designed to express what had become the practice of the House, the matter was made a party question and the motion was rejected. (17) And so, in the absence of any change made, as it must be made, on the initiative of Parliament itself, the archaic rules as to Parliamentary privilege as to publication are still officially in force. The situation is only made palatable, in terms of contemporary democratic society, by Parliament itself tolerating and encouraging what Sociological Jurisprudence calls the gap between the law-in-books and the law-in-action, and turning a blind eye to the continuing disregard of the old rules by the newspapers and the communication media in general. (18) Such an attitude is not completely healthy, in community terms, however. It does mean that a Sword of Damocles must always hang over the heads of newspaper publishers and reporters as to what they can legally do in regard to Parliamentary proceedings, even if Parliament itself may never seek to re-invoke the old rules against publication. (19) And while a certain gap between the positive law as written and community "living law" or de facto practices is normal and even acceptable in most legal problem-situations, it does not encourage respect for the law if that gap is permitted to become too great and to continue too long, especially if Parliament itself, as the official, community law-making instrument, is the main actor or culprit in that situation.

IV. Publication outside the ambit of the Parliamentary Papers Act, 1840. The Common Law position.

In respect to publications of the debates and proceedings of Parliament not specifically covered by the Parliamentary Papers Act, 1840, and consequently not legally privileged by virtue of that Act, the relevant legal principles remain those of the Common Law - the actual Parliamentary practice as confirmed or limited by the regular Law Courts. The leading case is Wason v. Walter (20), an 1868 decision of the Court of Queen's Bench which, in so far as it defines the scope of British Parliamentary privilege at that time, would clearly fall within those privileges, immunities, or powers held, enjoyed and exercised by the British House of Commons and its Members as at February 14, 1871, and so automatically "received" as privileges of the British Columbia Legislative Assembly in terms of the Constitution Act of British Columbia, 1960.

Wason v. Walter involved an action of libel against the proprietors of The Times of London for a report of a debate in the House of Lords in which statements had been made that reflected unfavourably on the plaintiff. A second count in the libel action was based on a Leading Article published by The Times on the same debate. In the trial of the action, Chief Justice Cockburn directed the jury that if the substance of the alleged libel contained in the first count - the newspaper report of the debate - was a faithful and correct report of the debate, the publication would be legally privileged; and that, as to the second count, - the editorial commentary in the leading article - the issue of legal liability or legal privilege should be determined on the basis of whether the contents of the editorial represented fair and reasonable comments on matters of public interest. In the trial action, the jury rendered a verdict in favour of the defendant newspaper proprietors; but the trial decision was then appealed on the basis of an alleged misdirection as to the law by the trial judge, Chief Justice Cockburn. On the appeal, the judgment of the full bench of the Court of Queen's Bench was again rendered by Chief Justice Cockburn. In rejecting the appeal, Chief Justice Cockburn, for the court, affirmed that it was of paramount public and national importance that parliamentary proceedings

be communicated to the public, the public having the deepest interest in knowing what passes in Parliament. On the other hand, Chief Justice Cockburn noted, a garbled or partial report, or a report of detached parts or proceedings published with intent to injure individuals would - as is the case with reports of judicial proceedings - be disentitled to legal protection. On the matter of the newspaper editorial criticisms of the Parliamentary debate, Chief Justice Cockburn declared that such comments would be legally privileged if made upon a matter of public interest, with an honest belief in their justice and with such a reasonable degree of judgment and moderation as, in the opinion of the jury, to amount to a fair and legitimate criticism on the conduct and motives of the person so censured in the editorial.

The short holding in Wason v. Walter is that a faithful report in a newspaper of a Parliamentary debate is not actionable at the suit of a person whose character may have been impugned in the debate; and that a fair and honest editorial comment is similarly non-actionable. The privilege in such cases is, therefore, not an absolute one; but only, on the analogy of reports of judicial proceedings, a qualified privilege, predicated upon a demonstration of good faith and fairness on the part of the person seeking to invoke that privilege as a legal defence.

In the same vein, when a Member of Parliament chooses to descend into the street and himself to publish his own speeches, he loses the normal protection afforded by delivery of the speech in the House itself. This is the effect of the decision in Lord Abingdon's case in 1795 (21) where the defendant had published in several newspapers at his own expense a speech delivered in the House of Lords in which he had accused his lawyer of improper professional conduct. Rejecting Lord Abingdon's contention that a Member of Parliament had a right to print what he certainly had a right to speak in Parliament, the Court of King's Bench imposed sentence of three months imprisonment, plus a fine of £100, and required security for good behaviour. The decision in Lord Abingdon's case was rendered half a century before the enactment of the Parliamentary Papers Act, 1840, and so perhaps it may not be too significant now that speeches are officially published under

the imprimatur of the House and legally privileged when so published. A Member of Parliament who distributed to his constituents and other interested parties, at his own expense, copies of the official Hansard record of his own speeches would not, today, be caught by the rule in Lord Abingdon's case; but he might cease to be privileged if he took the extra step of editing or augmenting the official Hansard record for purposes of any such distribution.

In Creevey's case in 1813 (22) the defendant had made certain charges against an individual in a speech in the House, and when incorrect reports of the speech began to appear in several newspapers, he took the step of sending a correct version of his own remarks to a newspaper editor with a request for publication. Creevey was found guilty of libel, on the basis of the newspaper reports of the corrected version of the charges he had made in his speech in Parliament, and fined £100. The Court of King's Bench refused an application for a new trial; and after Creevey complained to the House of Commons concerning the proceedings in the Court of King's Bench, the House itself refused to intervene, declining to accept the argument that the Court proceedings in the matter constituted a breach of Parliamentary privilege.(23)

As the Common Law precedents now stand, therefore, outside the official, Hansard-style publication by order of Parliament itself, the privilege afforded as a defence for publication or editorial or other comment on Parliamentary debates and proceedings is a qualified privilege only - not an absolute one as under the Parliamentary Papers Act; and the onus of proof is on the defendant himself affirmatively to establish his own good faith or fairness and honesty.

Further, the scope of the privilege afforded by the Parliamentary Papers Act being a narrow one as to the range of official publication to which it extends, it is clear that the entry by Parliament into new forms of publication through new communications media - radio and television - presents radically new problems that are hardly covered by the law, both statute and Common Law, as it existed on February 14, 1871, as to the limits of legal protection afforded both to the Member of Parliament taking part in debates which will be diffused either contemporaneously or on a delayed, replayed basis to the general public,

and also to the proprietors and employees of the communication media actually engaged in such diffusion.

V. Responses to the specific questions referred to the Special Commission for inquiry and report. (24)

In the light of the foregoing establishment of the relevant legal principles, both statutory and Common Law, as to the scope of Parliamentary privilege in relation to publication of Parliamentary debates and proceedings, the following responses may be made, seriatim, to the specific questions referred to the Special Commissioner.

Q. 1. a. By virtue of the Parliamentary Papers Act (U.K.) of 1840, and on the basis that that Act has legal effect in British Columbia, there now presently exists full legal authority to publish, (print) in official, Hansard-style form, the debates of the Legislature of British Columbia. This proposition derives from a reading together of the Constitution Act of British Columbia; (25) the English Law Act of British Columbia; (26) and British Columbia Legislative Assembly Standing Order 1. However, to make assurance doubly sure - the chain of legal authority being complex and somewhat indirect - it is recommended that the British Columbia Legislature reenact, expressly and in terms, the licence to publish (print) legislative debates conferred under the Parliamentary Papers Act of 1840.

The above authority is, however, limited in two respects. First, it only covers (privileges) the official Hansard-style publication of the legislative debates appearing under the official imprimatur of the Legislature itself, and does not extend to other, unofficial forms of publication. Publication, either in whole or in part, of legislative debates in a newspaper carries, at best, a qualified privilege - not the absolute privilege extending to the Hansard-style reports. And so the newspaper publication must be judged on the same basis as reports of proceedings in courts of justice: the report must be an honest and faithful one, with a garbled or partial report, or a report of detached parts of proceedings published with intent to injure individuals, disentitled to legal protection. Even a private publication by an individual Member of the Legislature does not qualify for the absolute privilege conferred on official publications of the legisative debates.

If it is desired to extend the absolute privilege to these cases, it would be necessary to do so expressly, by special enactment of the B.C. Legislature.

A second limitation on the absolute privilege as to publication conferred on official publication under the authority of the House by the Parliamentary Papers Act of 1840 is that it extends, in terms, only to printed publication - the medium of communication known in 1840. While the courts could, as a matter of legal logic - here, the so-called "progressive", generic interpretation - quite easily make the jump from the traditional, printed form of communication to other, less traditional (for example, radio and television) modes of official communication of the legislative debates, (27) there may be policy reasons for not yielding to any such logical considerations, the social interest, or at least the ultimate balance to be made between the competing social interests, being, at first sight, somewhat different. If it be desired to privilege official dissemination, under the authority of the Legislature, by radio and television, it would seem desirable to do so expressly by special enactment of the B. C. Legislature.(28) In the absence of any such special enactment, even official publication by radio or television could not, with any legal confidence, claim absolute privilege: it would have, on the most optimistic view, a qualified privilege, though even this latter claim is not completely beyond doubt since itself depending on analogical extension of Common Law precedents developed for a different communication medium (that is, the printed medium). (29)

Q. 1. b. The existing precedents effectively accord absolute immunity from suit to Members of Parliament except where, in effect, they descend into the street and themselves choose to publish privately their own parliamentary speeches.(30) The official publisher, publishing under authority of the House, also carries absolute immunity. By contrast, the newspaper publisher, as we have seen, carries at best a qualified privilege when he chooses to publish, in whole or in part, parliamentary debates and speeches, or a fortiori when he chooses to comment on them; the newspaper publisher, as the law now stands, acts in a certain sense at his own risk in

that he is subject to possible punishment for contempt by the Legislature if his reporting is deemed by the Legislature itself to be unfair or inaccurate or possibly libellous; and the newspaper publisher is subject, also, to the possibility of libel actions by persons feeling themselves to be aggrieved by the publication, whether Members of the Legislature or private citizens. The private citizen, for his part, cannot act directly against a Member of the Legislature for what the Member may have said in the legislative debates, except where the Member chooses to publish his speech privately; the private citizen cannot act against the official, Hansard-style publisher; and the private citizen can only act against the non-official, newspaper publisher in cases to which the newspaper publisher's qualified privilege does not extend. As the law now stands, the balance between, on the one hand, the interests of Members of the Legislature in carrying out their legislative functions without fear or favour, and on the other hand, the interests of private citizens or groups in not being slandered or libelled in the legislative debates and the published reports of those legislative debates, without effective means of political or legal redress, seems tilted rather heavily in favour of the the interests of the Members of the Legislature. This particular imbalance appears bound to be accentuated with the transition from indirect, written (printed) dissemination of the legislative debates to direct oral (radio) and direct oral-visual (television) dissemination, granted the immensely greater range and immediacy and also the unusual intimacy and impact of these newer communication media.(30a) Corrective or compensatory community action designed to afford a correspondingly wider and more effective range of remedies for persons seeking redress from the vastly augmented dissemination of legislative debates afforded by direct radio and television diffusion, seems needed, and this whether such aggrieved persons be themselves Members of the Legislature or simply private citizens.

Q. 2. There is no bar to the constitutional competence of the British Columbia Legislative Assembly to legislate to re-affirm, or to

define more precisely, or even to limit or extend the privileges and immunities, and powers of the Legislative Assembly and of its Members, save whatever limitations may be derived directly or by implication from the federal constitution of Canada and from the decisions of the Canadian Supreme Court upon that constitution. The Canadian constitution is, however, according to its Preamble and as interpreted and applied by the Canadian Supreme Court, to be a "Constitution similar in Principle to that of the United Kingdom"; and so caveats that contemporary advanced thinking on constitutional Separation of Powers might otherwise suggest as to acceptance today of the practice of the British Parliament, with that Parliament's awesome historically-based powers to adjudge and punish in contempt in protection of its Members and their historical privileges, seem, from the strict constitutional law viewpoint, not to be applicable in a British Columbia and general Canadian context. The British Columbia Legislative Assembly, on this argument, is, quite as much as the British Parliament, a vestigial High Court of Parliament; and the heir, as such, to the fused governmental powers that the British Parliament traditionally exercised in the definition and defence of its own privileges. However, the limitation in the Constitution Act of British Columbia (31) to privileges, immunities, or powers held, enjoyed, and exercised by the British House of Commons and its Members, as at February 14, 1871, simply establishes a terminal date for purposes of automatic "reception" of British Parliamentary immunities in British Columbia. There is absolutely nothing, for example, to stop the B.C. Legislative Assembly from legislating to extend such "reception" so as to cover new British Parliamentary immunities emerging or developing beyond that date: or from legislating to introduce new Parliamentary immunities of its own choosing in substitution for or in supplement to the British Parliamentary immunities as at February 14, 1871, so long, of course, as any such local innovations in Parliamentary privileges respect the general federal Canadian constitutional imperative that the constitution remain "similar in Principle to that of the United Kingdom". It is arguable here, however, that the

contours of this principle, so far as it applies to Parliamentary privileges, is to be determined by the Legislature itself, (32) and that it is beyond the scope of normal judicial review. (33)

Q.3. The vastly increased power of the communication media today, dictated in part by sheer size - the growth of nation-wide press syndicates, and in part by the extra impact and immediacy of the new media like radio and television, means, as we have said, extra problems in preserving and extending individual interests - of the nature, for example, of the interest in privacy, or the interest in not being held up to public hatred, ridicule, or contempt - in competition with the corporate communication media-based interests such as the interest in the quickest and widest possible dissemination of news and information. One mode of redressing the balance in favour of the individual interests would be, clearly, to narrow the scope of the legal protection now afforded by that qualified privilege currently enjoyed by newspapers and presumably to be sought to be invoked, in the future, by radio and television also, in the publication of reports or commentaries on legislative debates. It would be perfectly possible, for example, to move by legislation to amend the defence of qualified privilege in relation to newspaper publication by requiring newspapers to accept responsibility for verifying the truth of the factual statements contained in their reporting, and not merely responsibility for ensuring that they have made a fair report. And it would certainly be possible, by legislation, to deny altogether the defence even of qualified privilege in regard to radio and television reporting and commenting on legislative debates. Yet, however warranted some special rules may seem in regard to radio and television reporting, and however inadequate the traditional rule of qualified privilege may seem in an era of nation-wide newspaper trusts and syndicates, it does not, from the scientific-legal, jurisprudential viewpoint, seem either useful or desirable to essay the development of dramatic new rules as to privilege in publication in the interstices of a highly specific and spatially limited problem-situation - namely, the publication of Parliamentary debates. (34)

Nor does the cognate proposal for a legislative redressing of the balance of the competing interests in this area in favour of individual interests - namely, an increase in the punitive, enforcement powers of the legislature itself (35) - seem historically timely in the light of modern jurisprudential thinking and teaching on constitutional separation of powers and the inadvisability of permitting a concentration of quasi-judicial or quasi-executive powers in the legislative area of government (36), particularly where the powers that are thereby sought to be retained and extended rest largely, for their justification, on historical usage in bygone eras. "It is revolting", as Mr. Justice Oliver Wendell Holmes remarked, "to have no more substantial justification for a rule than that so it was in the time of Henry II"; and the reminder seems especially apposite today.

The better approach to vindication of individual interests in the face of the inordinate expansion of the public power and influence of the instruments of mass information would seem to be by facultative methods, relying heavily on public education and example, much as does the Ombudsman - based approach to the protection of the constitutional liberties of the private citizen today. Perhaps the legislature could create a special, All-Party Committee having jurisdiction to examine questions of legislative privilege in regard to publication or dissemination of legislative debates. Such an All-Party Committee could have referred to it all cases of alleged breach or misuse of Parliamentary privilege, involving alleged slander or libel in the Parliamentary debates or their public diffusion - first, and most obviously and directly, on the part of Members of the Legislature criticising private citizens or groups; and second, and less directly, on the part of press, radio, or television, in reporting or commenting on the speeches of Members of the Legislature. The All-Party Committee could then proceed to investigation and report, involving the taking of evidence and the hearing of witnesses, with the use of compulsory powers where necessary. Such a procedure would hardly be coterminous with Court action, since it is not recommended, here, that the original Parliamentary contempt powers to punish criminally or by fine be invoked. But the procedure would have the advantages of relative

immediacy in terms of application, and also of avoiding the great expense and incidental frustrations of individual Court actions; and it should normally ensure, because of the Parliamentary committee process involved, a certain degree of media coverage which could do much to correct any originally unfair reporting or diffusion through the media.(37)

Q. 4. The legal distinctions now existing between Hansard-style publication of Parliamentary debates on the one hand and dissemination of such debates by radio and television, are clear; and they are also substantial, as we have already noted. Hansard-style official publication of Parliamentary debates is absolutely privileged; newspaper publication of such debates has qualified privilege only; and, as the law now stands, radio and television broadcasting of such debates cannot, with certainty, claim any legal privilege at all, - even qualified privilege.(38) Even if, by judicial construction, the historical (dating from 1868) defence of qualified privilege for newspaper publication or newspaper commenting on legislative debates were to be extended to similar "publications" by radio or television, it must be emphasised that the judicial strictures against "garbled or partial" reports and against publication of "detached parts of proceedings" as disentitling newspaper reports of debates to even their present limited defence of qualified privilege,(39) seem to apply with special force to delayed or replayed broadcasts on radio or television or to the use of edited or clipped versions of the original radio or television broadcasts. It has been held, for example, that the publication (in printed form) of extracts or abstracts from any paper printed under the authority of the House is, if the publication is made bona fide and without malice, subject to the defence of qualified privilege in terms of the Parliamentary Papers Act, 1840.(40) On the other hand, a newspaper head-line which is not part of the report of the Parliamentary proceedings has been held not to be privileged, and so to produce legal liability in any libel action against the publisher.(41) The opportunity for making an ally of time in scrutinising the original broadcasts for purposes of

examining their accuracy and balance, prior to any delayed or replayed broadcast, would seem to place some affirmative obligations of action upon radio and television broadcasters to enable their broadcasts to qualify as being fair for purposes even of the qualified privilege defence; while any editing or use of news clips on the part of such radio or television broadcasters, prior to the broadcasts, would seem to increase even more the burden of proof of fairness resting upon the broadcaster.

The answer would seem to be clear! Pending any new Provincial legislation to define and extend the scope of privilege as to publication of Parliamentary debates by radio or television, the radio or television broadcaster acts at his own peril; and he would be very well advised, in particular, to limit himself to contemporaneous broadcasting, without any editing or deletions or extraneous commentary interpolated into the broadcasts themselves. There is a case, indeed, for the Province legislating to extend to official, unedited, contemporaneous radio and television broadcasting of debates the absolute privilege now applied by the Parliamentary Papers Act, 1840, to Hansard-style printing of debates; and also for the Province legislating to extend to other forms of radio and television publication in delayed or replayed or edited form, with or without commentary, that more limited, qualified privilege now enjoyed (according to judicial decisions) by publication under similar conditions in newspapers. The extra problems posed for individual interests (for example, the interests in privacy and in good name and reputation) by the far wider range and impact of radio and television broadcasting of debates in comparison to newspaper publication of debates, can always be taken care of in the fact-finding processes and in the extra factual element of proof that would seem to be implied and required for purposes of the discharge by the defendant publisher, of the burden of proof of fairness resting upon him, in any defence of qualified privilege for radio or television broadcasting, in delayed or truncated form, of Parliamentary debates. The advantages of common legal standards or categories of legal obligations for all forms of media (newspapers, radio, and television) involved in publication of Parliamentary

debates, seem clear, while maintaining of course the historical legal distinction between Hansard-style official publication (absolute privilege), and unofficial publication (qualified privilege, predicated upon a meeting of the standard of fairness).

The claims of the communication media for a reasonably clear and concise statement of their legal rights and obligations in the matter of publication (42) counsel the merits of putting this all together in one comprehensive statute that reproduces directly, in British Columbia statutory form, the substance of the British Parliamentary Papers, 1840, and the other, cognate British judicial decisions on the limits of privilege as to publication of or commentary on Parliamentary debates. The fact that the Mother of Parliaments in Great Britain has not yet managed to do this for her own subjects, in spite of very strong representations to that end from the main media groups in Great Britain (43), should not deter the British Columbia Legislative Assembly from moving to legislate in an area of clear public interest and concern.(44)

VI. Recommendations

Having regard to the detailed responses to the specific questions referred for inquiry and report to the Special Commission, the following recommendations are advanced: -

1. Any decision by the Legislative Assembly to permit radio and/or television broadcasting of Parliamentary debates and proceedings should be implemented through specific, enabling legislation directed to that end (44 a) and such enabling legislation should preferably extend also to the other, more traditional modes of publication of Parliamentary debates and proceedings in printed form so as to restate and up-date the existing law in that area.

2. Such enabling legislation, should, so far as it applies to radio and/or television broadcasting, provide, expressly and in terms, that no action or proceeding, civil or criminal, shall lie in the Courts against any person for the publication, in the official reports or in broadcasting by radio or television, of the Parliamentary debates and proceedings, where such publication is made under the authority of the Speaker of the House (45) pursuant to such enabling legislation.(46)

3. The enabling legislation should also provide, expressly and in terms, that no action or proceeding, civil or criminal, shall lie in the Courts against any Member of the Legislative Assembly, for anything he may have said in the Parliamentary debates and proceedings, when such debates and proceedings are published in the official reports or in broadcasting by radio or television, made under the authority of the Speaker of the House pursuant to such enabling legislation. (47)

4. In respect to delayed or re-played radio or television broadcasting of the Parliamentary debates and proceedings and in respect also to broadcasting of excerpts from the debates or commentaries upon the debates, it is not recommended that any express provision, one way or the other, be made at this time in the enabling legislation. (48) This would leave any such questions, if they should arise in the immediate future, to be regulated by induction from the existing, "received" British Parliamentary law and the Common Law decisions thereon; (49) and to be regulated on a pragmatic, empirical, case by case basis, as the specific problems arise. The reasons for counselling the virtues of delay in this particular area are two-fold. First, the existing law of publication in this particular area, with its specialized legal defences, is sufficiently ancient and historically grounded to suggest that its reform or re-writing to meet contemporary conditions would better be considered comprehensively, and not piecemeal or ad hoc in the interstices of a particular problem of the limits of Parliamentary privilege as to publication. Second, the newer communication media, - and especially television with its immediacy and intimacy and at the same time its direct nation-wide impact, - are sufficiently different from the other, more traditional forms of communication through publication of the printed word to suggest the merits of making an ally of time in order to decide whether the policies (interests) in response to which the old positive law rules as to printed publication were worked out are necessarily deserving to be applied, in the same emphasis and degree, to the newer communication media too.

5. To decide upon the general conditions, including timing and duration, of the broadcasting of Parliamentary debates and proceedings, the enabling legislation should provide for the creation of a Legislative Assembly Committee on the Radio and Television Broadcasting of Parliamentary Debates and Proceedings,(50) to be presided over by the Speaker of the Legislative Assembly and composed of a number of other Members of the Legislative Assembly - perhaps five to seven Members apart from the Speaker - selected more or less in proportion to Party representation in the Legislative Assembly but with representation, as far as possible, for each recognized Party in the House.

6. The Legislative Assembly Committee on Radio and Television Broadcasting of Parliamentary Debates and Proceedings should have jurisdiction: -

(a) To determine the general conditions of radio and television broadcasting of Parliamentary debates and proceedings, including not merely direct, contemporaneous broadcasting, but also delayed or re-played broadcasting; (51) and the conservation in permanent safe-keeping of any broadcasts of sufficient historic interest to justify preservation; (52)

(b) To receive, and to hear, and to report on, any complaints as to alleged abuse of Parliamentary privilege, as directed to or augmented by the radio or television broadcasting of the Parliamentary debates and proceedings - this without derogating in any way from the already existing powers of the Legislative Assembly to adjudge and to punish, if need be, any infringement on or abuse of Parliamentary privileges either by Members of the Legislative Assembly or by the general public.

This latter recommendation - Recommendation 6(b) - is, as indicated earlier, one that seeks to rely upon publicity and information and the public pressures resulting therefrom - friendly persuasion - to achieve and maintain proper standards of dignity or ordinary decency and fairness in the Parliamentary debates (53) and their reporting, rather than to try to invoke the awesome historical powers of Parliament to pursue and punish alleged offenders against its privileges. It is envisaged

that the lodging of a formal complaint with the Legislative Assembly Committee on Radio and Television Broadcasting of Parliamentary Debates and Proceedings, followed by an official hearing and taking of evidence and summoning of witnesses if necessary, and followed finally by an official finding of the Legislative Assembly Committee - to be arrived at, if necessary, by majority vote - would become the normal procedure for airing of an alleged grievance arising from or related to the official broadcasting by radio or television of Parliamentary debates and proceedings. (54) The emphasis would thus be on a facultative approach, though the historically-based powers of the Legislative Assembly as a whole in claimed defence of its privileges would always remain in reserve for alternative or supplementary action if deemed to be necessary by the Legislative Assembly. All the evidence of the concrete experience of those Parliamentary assemblies, in the Western constitutional tradition - Australia and West Germany, for example - that have had some sustained experience in the broadcasting, either by radio or by television, of their debates, suggests that the risks of abuse can be very much exaggerated and that it is unnecessary, even foolish, to try to escalate to the definition of punitive, coercive-style, protective measures, with all the deprivations that that would necessarily involve for long-cherished constitutional interests in speech and communication, in advance of actual problem-situations.

Edward McWhinney,
Queen's Counsel;
Barrister-at-Law;
Barrister & Solicitor;
Professor.

Vancouver,
December 10, 1974

Special Commissioner

BRIEFS

The Commission has received a number of briefs. Those listed below deal, at least in part, with the subject of this Report:

Maude Ashby, Press Gallery

Bob Carr, Independent News Group

Canadian Federation of University Women

Professor C.E.S. Franks, Queen's University, Kingston

John Graham

Hamilton West Liberal Association

B. H. Kellock, Q.C.

Legislative Press Gallery of Ontario

D. E. McLean

Donald O'Hearn

Ontario Educational Communications Authority

Ontario Real Estate Association

Ontario Secondary School Teachers' Federation

Progressive Conservative Caucus Committee on the Legislature

Provincial Council of Women of Ontario

James B. Schneider, Consultant to Neighbourhood and Information Services

Shoreacres Broadcasting Company Limited

ACKNOWLEDGEMENTS

The Commission has received counsel from many individuals during the preparation of this Report.

In particular, we acknowledge the contributions of all Members of the 29th Legislature. In past reports we have listed those Members with whom we discussed the subjects of those reports. We have not done so in this Report. Because of its special subject matter, all Members have contributed, directly or indirectly, to its contents. We would also like to thank the members of the Legislative Assembly Press Gallery with whom we had a number of meetings.

As well, we are indebted to former Members, Clerks, Speakers and Members of other provincial legislatures, the Federal Parliament and a number of United States State Legislatures, the Office of the Clerk of the British House of Commons, and the Director General of the Commonwealth Parliamentary Association who supplied the Commission with reports from other Commonwealth countries.

We would like to acknowledge and thank in particular the following:

H-C. Ahrens
Second Secretary
Canadian Embassy
Helsinki, Finland

Gerald Baldwin, Q.C., M.P.
House Leader, Progressive
Conservatives, Ottawa

John Bassett
Chairman and President
Baton Broadcasting Inc.

Brian C. Batsford, M.P.
British House of Commons

Lars Bjorkman
News Department, TV-1
Stockholm, Sweden

Owen Boris
Canadian Cable Television Assn.

Peter G. Bowers
General Manager, Operations
Division, O.E.C.A.

Stuart C. Brandy
Vice-President & General Manager
CKEY Radio, Toronto

David Callfas
Assistant Clerk
Legislative Assembly of Ontario

Peter Brannan
Chief of Hansard Office
Ontario Legislature

John L. Brown
Former MPP, Ontario

Peter Campbell
General Supervisor, Policy
CBC Radio, Toronto

Robert Carr
Independent News Group
Queen's Park, Toronto

Fred M. Cass
Former MPP, Ontario

T. Ray Connell
Former MPP, Ontario

D. M. Cornet
Canadian Ambassador
Copenhagen, Denmark

William Cunningham
Vice-President
Global Television Network

Lambertus Demmers
Embassy of the United States
The Hague, Netherlands

F. P. DeNardis
Vice-President, Operations
CHCH-TV, Hamilton

Peter Dobell
Director, Parliamentary Centre
for Foreign Affairs, Ottawa

Edward Dunlop
Former MPP, Ontario

Fred Ennis
CHUM Radio, Toronto

R. A. Faibish
Executive Vice-President
CJOH-TV, Ottawa

Alistair Fraser
Clerk of the House of Commons
Ottawa

Mrs. C. Gotlerstrom
Sapport Program, TV-2
Stockholm, Sweden

Tom Gould
Vice-President, News, Features
and Information Programming
CTV Network, Toronto

John O. Graham
Canadian Cable Television Assn.

Stuart W. Griffiths
President, CFTO-TV, Ottawa

Jens Haerevig
Technical Department
Denmark Radio

Jim Hanley
General Manager, Education Media
O.E.C.A.

Denis Harvey
Deputy Assistant General Manager
CBC Television, Toronto

P. Heinbecker
First Secretary
Golfvagen 17
Denderyd, Sweden

Mr. Hjortedel
Head of Folketing Bureau
Denmark

John Holtby
First Clerk Assistant
Legislative Assembly of Ontario

Sune Johansson
Director of the Riksdag
Brunkebergs Terrasen 1
Sweden

Allistair Johnston
Former MPP, Ontario

Don Johnston
News Director
CFRB Radio, Toronto

Rolf Jonssen
Royal Commission on Information
Sweden

Gene Kirby
Vice-President, Programming
CKEY Radio, Toronto

Stanley Knowles, M.P.
House Leader, New Democratic Party, Ottawa

A. Kuronen
Yleisradio
Helsinki, Finland

Adolf G. Lacher
Secretary, Embassy of Switzerland
Ottawa

Hon. Lucien Lamoureux
Former Speaker, House of Commons
Ottawa

Philip Laundy
Director, Research Branch
Library of Parliament, Ottawa

Jacques Lessard
Secrétaire-adjoint
Assemblée nationale du Québec

Roderick Lewis, Q.C.
Clerk of the Legislative Assembly
Queen's Park, Toronto

Philip B. Lind
Vice-President, Programming
Rogers Cable TV, Toronto

Hon. Allan MacEachen, M.P.
Secretary of State for External Affairs, Ottawa

Andrew MacFarlane
Dean of Journalism
University of Western Ontario
London, Ontario

J.P.J. Maingot
Parliamentary Counsel and Law Clerk of the House of Commons
Ottawa

Mac Makarchuk
Former MPP, Ontario

Robert Marleau
Former Clerk of Committees
House of Commons, Ottawa

Clive Mason
Manager, Network News
CBC Radio, Toronto

Jack Mattenley
Vice-President and General Manager
CKVR-TV, Barrie

Alex McFedries
Assistant Clerk
Legislative Assembly of Ontario

Bob McIntyre
News Director
CKVR-TV, Barrie

Gary McLaren
News Director
CKCO-TV, Kitchener

Rt. Hon. R. J. Mellish
Chief Government Whip
British House of Commons

Marcel L. Munro
Assistant General Manager
English Services Division
CBC Television, Toronto

Richard O'Hagen
Minister-Counsellor (Information)
Canadian Embassy
Washington, D.C.

W. T. Parnaby
News Director
CKEY Radio, Toronto

M. Pérusse
Secrétaire des Commissions
parlementaires
Assemblée nationale du Québec

Walter G. Pitman
Former MPP, Ontario

Ton Planken
Producer, "The Hague Today"
The Hague, Netherlands

W. B. Plaunt
President and General Manager
KCNY-TV, North;
CKSO-TV, Sudbury

I. Pohjola
Finnish Parliament Press Officer
Helsinki, Finland

M. Pouliot
Secrétaire des Commissions
parlementaires
Assemblée nationale du Québec

Mrs. Ada Pritchard
Former MPP, Ontario

Tim Reid
Former MPP, Ontario

Gordon Simons
Canadian Cable Television
Association

Mr. Skytte
Folketing Speaker
Denmark

Elmer Sopha
Former MPP, Ontario

Eric J. Spicer
Parliamentary Librarian
Ottawa

John Spragge
Program Director
CFRB Radio, Toronto

E. J. Stuebing
Vice-President and News Director
CFTO-TV, Toronto

James B. Trotter
Former MPP, Ontario

G. H. van Beek
NOS Television and Radio
The Netherlands

R. van Berkel
Information Officer
Second Chamber
Netherlands Parliament

Merle Zoerb
Canadian Cable Television
Association